TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 43

INTERSTATE COMMERCE COMMISSION, THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL., APPELLANTS,

vs.

HOBOKEN MANUFACTURERS' RAILROAD COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY

FILED APRIL 15, 1943.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

Civil 1100

Interstate Commerce Commission

HOBOKEN MANUFACTURERS' RAILROAD COMPANY

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, Baltimore & Ohio R. R. Company, Shelton Pitney, Walter P. Gardner, Trustees of Central R. R. Co., Delaware & Hudson R. R. Corp., Delaware, Lackawanna & Western R. R. Co., Robert E. Woodruff, and John A. Hadden, Trustees of Erie R. R. Co., Lehigh Valley R. R. Co., New York Central R. R. Co., Frederic E. Lyford, Trustee, of New York Ontario & Western Ry., Pennsylvania R. R. Co. and Reading Company, Interveners

DOCKET ENTRIES

Aug. 27, 1940. Petition filed.

Oct. 18, 1940. Intervention of Interstate Commerce Commission, filed.

Oct. 18, 1940. Answer of Interstate Commerce Commission, filed.

Oct. 18, 1940. Notice fixing place for trial filed (Newark).

Oct. 26, 1940. Motion and Notice to intervene as parties defendant, filed (Baltimore & Ohio R. R. Co., et als.).

Nov. 4, 1940. Hearing on motion for leave to intervene as parties defendants. No opposition. Order to be signed. (Fake.)

Nov. 12, 1940. Order granting leave to intervene as parties defendants, filed.

Nov. 14, 1940. Answer of Interveners, filed.

Nov. 18, 1940. Answer of United States of America, filed.

June 19, 1941. *Statutory Hearing.* Decision Reserved (Judge Clark, Circuit Court Judge, Judges Fake and Walker, District Judges).

June 19, 1941. Testimony filed.

Apr. 18, 1942. Statutory Hearing. Decision reserved. (Judge Biggs, Cir. Court Judge, Judges Fake and Smith).

Apr. 18, 1942. Testimony filed.

Apr. 28, 1942. Plaintiff's request for findings of fact and conclusions of law, filed.

Apr. 29, 1942. Defendant's suggested findings of Fact, filed.

[fols. 2-3] Nov. 24, 1942. Findings of Fact, filed (Biggs).

Nov. 24, 1942. Memorandum filed (Biggs), CCA Judge). Order of Commission of July 24, 1939, to be set aside and directing Commissioner to reinstate proceedings).

Jan. 8, 1943. Final Decree, filed.

Mar. 8, 1943. Petition of ICC and Baltimore & Ohio R. R. Co. for Appeal filed. (To Hoboken Mfrs. R. R. Co.).

Mar. 8, 1943. Order allowing appeal filed (To Supreme Court).

Mar. 8, 1943. Notice of appeal, filed (To Hoboken Mfrs." R. R. Co.).

Mar. 8, 1943. Assignment of Errors, filed.

Mar. 8, 1943. Citation on Appeal filed.

Mar. 8, 1943. Bond on Appeal filed.

Mar. 8, 1943. Statement by defendants-appellants directing attention to Par. 3 of Rule 12 filed.

Mar 8, 1943. Præcipe of defendants', transcript of record, filed.

Mar. 8, 1943. Jurisdictional Statement by defendants under Rule 12 of Revised Rules of Supreme Court, filed.

Mar. 11, 1943. Notice of Appeal of Interstate Commerce Commission, directed to Attorney General of State of N. J., filed (Service acknowledged 3/9/43).

Mar. 22, 1943. Order as to Exhibits, filed.

Mar. 23, 1943. Statement of plaintiff-appellee under Par. 3, &c., filed.

* * * * * * *

[fol. 4] In the United States District Court for the District of New Jersey

[Title omitted]

Petition to the Honorable Judges of the District Court of the United States for the District of New Jersey—Filed August 27, 1940.

Plaintiff, more fully described hereinafter, brings this petition against the United States of America, and hereby

sues to enjoin, set aside, suspend and annul an order of the Interstate Commerce Commission, and thereupon complains and says:

I

Plaintiff, Hoboken Manufacturers' Railroad Company, is a corporation organized and existing under the laws of the State of New Jersey, with its principal office at Hoboken, New Jersey, and is a resident of this judicial district. It is engaged in business as a common carrier of freight by railroad in interstate commerce and is subject to the Interstate Commerce Act (24 Stat. L. 379, U. S. C. A. Title 49) and acts amendatory thereof and supplementary thereto.

II

This suit is instituted under the provisions of Acts of Congress approved June 18, 1910 (36 Stat. L. 539), March 3, 1911 (36 Stat. L. 1149), and October 22, 1913 (38 Stat. L. 219), commonly referred to as the Commerce Court Act [fol. 5] and the Urgent Deficiencies Act, as re-enacted in Title 28 U. S. C. A., Section 41 (28) and Sections 43 to 48, inclusive; and also under the general equity jurisdiction of this court. The amount in controversy herein exceeds the sum of $3,000.

III

Plaintiff is a short switching line railroad operating along the waterfront of Hoboken, New Jersey, and serving numerous steamship piers, industries and public team tracks. It has track connection with the Erie Railroad, by means of which it interchanges freight with the Erie Railroad and through the latter with other trunk line railroads reaching New York Harbor. Plaintiff also interchanges freight with the Delaware, Lackawanna and Western Railroad through a so-called float bridge. Plaintiff delivers a substantial part of the freight so interchanged to or receives it from various steamship lines docking at piers served by plaintiff in Hoboken.

IV

Plaintiff participates and for many years past has participated in the establishment and maintenance with its trunk line railroad connections of joint through rates for the transportation of freight traffic between points on its

line, including steamship piers served by it, on the one hand, and points on the lines of said trunk line railroads and their connections (hereinafter collectively referred to as trunk lines), on the other hand, including joint through rates for the transportation of such freight delivered by plaintiff to or received by it from the vessels of steamship lines docking at piers served by plaintiff, and plaintiff's compensation for its portion of the through transportation service of such freight consists of divisions of such joint through freight rates.

V

The order of the Interstate Commerce Commission which it is hereby sought to set aside and annul was made in a [fol. 6] proceeding before the Interstate Commerce Commission, entitled *Hoboken Manufacturers' Railroad Company* v. *The Akron, Canton & Youngstown Railway Company, et al.*, Docket No. 27630, 234 I. C. C. 114, which proceeding was instituted on the petition of plaintiff and involved the division between plaintiff and the trunk lines of the joint through rates described in paragraph IV when applicable to and collected for the transportation of freight interchanged by plaintiff with its trunk line railroad connections, and delivered by plaintiff to or received by it from the vessels of Seatrain Lines, Inc. (hereinafter referred to as Seatrain), a common carrier by water which in October 1932 began and has since engaged in operation to and from a pier in Hoboken served by plaintiff. By its petition or complaint plaintiff alleged that there was no agreement between it and its trunk line railroad connections as to the division of the rates on such traffic and that its trunk line railroad connections were collecting the freight charges thereon and arbitrarily withholding for themselves excessive and unlawful divisions and allowing inadequate divisions to plaintiff in violation of Section 1. (4) of the Interstate Commerce Act, and the complaint prayed that the Commission, under the provision of Section 15 (6) of said act, after investigation, prescribe by order the just, reasonable, equitable, non-prejudicial, and non-preferential divisions of such rates on such traffic to be received by plaintiff and its trunk line railroad connections respectively. A copy of plaintiff's petition or complaint is annexed hereto as Exhibit A and made a part hereof.

VI

When plaintiff's complaint was filed with it, the Interstate Commerce Commission in the manner provided for by the Interstate Commerce Act entered upon an investigation of the issues raised by said complaint and after service of said complaint on the railroads named therein as defendants, as required by law, and after answers by such defendants, hearings were had before an Examiner [fol. 7] of the Commission, briefs were filed, a proposed report was prepared by the Examiner and served on the parties, oral argument was had thereon before the Commission and thereafter the Commission made, entered and served its report, dated July 24, 1939, containing its findings and conclusions and entered and served its order. A copy thereof is attached hereto as Exhibit B.

VII

The Commission in its report made various findings and conclusions which plaintiff believed and believes were erroneous in the respects hereinafter indicated. Moreover, although plaintiff by its complaint prayed and the law requires that the Commission "by order prescribe the just, reasonable and equitable divisions" to be received by the several carriers, the Commission erroneously failed so to do but entered an order merely dismissing the complaint. Hence plaintiff and its trunk line rail connections were and still are left with no basis of divisions of the joint through rates for the transportation of freight interchanged between them and delivered by plaintiff to or received by it from the vessels of Seatrain, they having been unable themselves to agree thereon and the Commission having dismissed the complaint without having by order prescribed such divisions. Accordingly, on or about January 12, 1940, plaintiff filed with the Commission its petition pointing out such alleged errors and the Commission's erroneous failure by order to prescribe any divisions, even in accordance with its own findings and conclusions, and praying that the Commission reconsider its action and correct such errors and grant a rehearing for the receipt of certain evidence excluded by the Commission's Examiner. By order dated April 1, 1940, the Commission denied plaintiff's petition.

VIII

It was shown by the evidence before the Commission that on or about 1920, an agreement was entered into between plaintiff and its trunk line railroad connections, which has [fol. 8] since been in effect, by which it was agreed, in so far as is here pertinent, that plaintiff's divisions of the joint through rates described in Paragraph IV hereof should be as follows:

"Carloads loaded or unloaded by H.M.R.R. (plaintiff) or at its expense	$1.35 per ton
Carloads loaded or unloaded by shipper or consignee or at their expense	.60 per ton"

IX

The evidence before the Commission showed that freight to be interchanged at New York Harbor between railroads, including plaintiff and trunk lines, and the ordinary type of cargo steamship vessel, herein sometimes referred to as a break-bulk vessel, must be unloaded from railroad cars and placed within reach of ship's tackle or must be taken from ship's tackle and loaded into railroad cars; that where the joint through freight rates of the trunk line railroads and of plaintiff, pursuant to their tariffs on file with the Interstate Commerce Commission, for the transportation of freight to or from New York Harbor, being the rates referred to in paragraph IV, are what are known as "shipside" or "lighterage-free" rates, such unloading or loading of cars and transfer between cars and ship's tackle is a service included in and covered by the rates and is performed by the railroads themselves or at their expense; that plaintiff interchanges with its trunk line railroad connections and switches to or from steamship piers served by it a substantial volume of freight to be delivered to or received from such break-bulk steamship vessels at such piers, to which the "shipside" or "lighterage-free" rates above referred to are applicable; that in order to deliver such freight to or receive it from such vessels and perform the transportation service undertaken by the trunk line railroads and plaintiff under their joint through "shipside" or "lighterage-free" rates, plaintiff at its expense unloads the freight from or loads it into railroad cars and transfers it between cars and the foot of ship's tackle, and under the agreement referred [fol. 9] to in paragraph VIII hereof receives and has re-

ceived a division of $1.35 per ton as its division of the applicable joint through rates representing its compensation for its portion of the through transportation covered by such rates, including both its switching operations and the unloading or loading of cars and transfer between cars and foot of ship's tackle; and that plaintiff customarily performs such loading or unloading and transfer by contracting therefor with the steamship line or its stevedores to perform the labor, at an average cost to plaintiff for such service of approximately 75 cents per ton, leaving to plaintiff a balance of 60 cents per ton as its compensation for its switching operations alone.

X

The evidence before the Commission showed that Seatrain is a steamship line engaged in business as a common carrier by water, whose vessels are constructed to transport freight in railroad cars; that by the use of certain patented devices, of which Seatrain has exclusive use and for which it pays certain royalties, freight cars and their contents can be transferred directly between Seatrain's vessels and railroads with which it connects, thereby eliminating the necessity of, and labor involved in, unloading the freight from or loading it into cars and transferring the freight between cars and the foot of ship's tackle, which are involved in the operation of interchanging freight between railroads and break-bulk or cargo ships of the ordinary type.

XI

It was alleged by plaintiff's complaint and shown by the evidence before the Commission that the agreement between plaintiff and its trunk line railroad connections, described in the foregoing paragraphs VIII and IX hereof, had and has no application to the division of rates on freight interchanged by plaintiff with Seatrain in railroad cars since such freight is neither "loaded or unloaded by plaintiff or at its [fol. 10] expense" nor "loaded or unloaded by shipper or consignee or at their expense", it not being loaded or unloaded at all; that accordingly, plaintiff sought by negotiation with its trunk line railroad connections to arrive at an agreement as to the divisions of joint rates to be paid to plaintiff on freight delivered by plaintiff to or received by it from the vessels of Seatrain, but such efforts were unsuccessful; that said trunk line railroads customarily collected

the entire transportation charges on shipments of freight interchanged between them and plaintiff, remitting to plaintiff its divisions thereof; that on the shipments here involved, namely, those interchanged by plaintiff with the vessels of Seatrain, said trunk line railroads arbitrarily remitted to plaintiff only 60 cents per ton (later increased to 63 and 66 cents per ton), which amounts represented proper divisions when plaintiff incurred no expense except for the mere switching of cars but which plaintiff believed to be inadequate and inequitable to it where the rates to be divided were lighterage-free rates, including compensation to the railroads for making shipside delivery or receipt and where plaintiff itself incurred expense in delivering freight to or receiving it from Seatrain vessels over and above the mere cost of switching the cars; that plaintiff's trunk line railroad connections withheld for themselves all of the freight charges collected by them except the amounts of 60, 63 or 66 cents paid to plaintiff by them and thereby, as plaintiff believed, kept for themselves divisions of lighterage-free rates which were excessive, unjust and unreasonable, their services being no greater on shipments consigned to or received from the vessels of Seatrain than on shipments delivered to or received from the vessels of break-bulk steamship lines at piers served by plaintiff, out of which plaintiff under the agreement referred to in paragraph VIII was paid a division of $1.35 per ton as described in Paragraph IX; that plaintiff accepted the payments of 60, 63 or 66 cents paid to it by its trunk line railroad connections on Seatrain traffic under protest and as payments on account of just, reasonable and equitable division; and since no agreement as to divisions on such freight could be reached [fol. 11] by plaintiff with its trunk line railroad connections, plaintiff, on or about December 30, 1936, filed its complaint or petition to the Interstate Commerce Commission, Exhibit A.

XII

The evidence taken at the hearing before the Commission's Examiner showed that in 1931 and in 1932, plaintiff and Seatrain entered into negotiations for the establishment by Seatrain of a terminal at a pier served by plaintiff and for the interchange between them of freight in cars; that an agreement was arrived at between the then management of plaintiff and Seatrain that Seatrain would establish

its terminal at a pier served by plaintiff, that the necessary crane and other facilities for the transfer of cars between the tracks on the pier and Seatrain's vessels would be constructed, that Seatrain would interchange freight with plaintiff in cars, and that in consideration thereof and for the use of Seatrain's patented facilities and rights in accomplishing transfer, and of Seatrain's undertaking to relieve plaintiff of the necessity of loading or unloading cars and of supplying all bracing, blocking or other equipment necessary for proper stowage in cars, and also in consideration of the additional traffic expected to be secured by plaintiff from the arrangement, plaintiff would enter into a contract to pay to Seatrain an amount approximating the compensation paid by plaintiff to other steamship lines or their stevedores as described in paragraph IX hereof; that it thereafter developed that plaintiff was then in financial difficulties and without financial resources to make the necessary changes and installation and that its ability to continue service was doubtful; that therefore Seatrain purchased all of plaintiff's stock (except directors' qualifying shares), which it now owns, provided plaintiff with additional capital and made substantial loans to plaintiff with the proceeds of which plaintiff caused the necessary crane and other facilities for the transfer of cars between plaintiff's tracks and Seatrain's vessels to be constructed and rearranged its tracks to enable it to handle the traffic involved; that [fol. 12] thereafter plaintiff entered into a written contract with Seatrain dated November 21, 1932 embodying the terms negotiated with and agreed to by plaintiff's former management, copy of which contract is attached hereto as Exhibit C; and that later a new contract, still in effect, dated February 27, 1937, was entered into modifying in some respects the previous contract, a copy of this later contract attached hereto as Exhibit D; and that pursuant to these contracts plaintiff delivered to Seatrain's vessels and received from them large quantities of freight which Seatrain received or delivered in railroad cars in accordance with the contracts and on which plaintiff made to Seatrain the payments called for by the contracts.

XIII

In its report, the Commission correctly found and determined that plaintiff as a switching carrier was entitled to

receive as its divisions of the joint through rates involved such amounts as would fully compensate it for its costs of performing its portions of the through transportation covered by such rates. The evidence showed, and the Commission in substance found, that the cost to plaintiff of performing merely the operation of switching cars between its connection with the trunk line railroads and Seatrain's pier approximated 60 cents a ton and that a division of 60 cents per ton (later increased to 63 or 66 cents) was and would be adequate, provided the only costs of plaintiff to be considered were the costs of such switching operations. Plaintiff contended that the payments made by it to Seatrain under the contracts above referred to (Exhibits C and D) should likewise be considered part of its costs of handling the traffic under the rates to be divided and that it should receive divisions sufficient to compensate it for these payments, as well as for its costs of performing switching alone. Plaintiff also contended that it would be unjust and inequitable for its trunk line railroad connections to retain for themselves all of the freight charges collected except the divisions of 60, 63 or 66 cents per ton, and that [fol. 13] the result would be unjustly to enrich them by giving them the entire benefit of the contract with Seatrain and the improved method of interchange made possible thereunder by Seatrain's patented devices, without any contribution thereto by them.

XIV

Anticipating that because Seatrain had acquired and then owned all of the stock of plaintiff (excepting directors' qualifying shares) it might be argued to the Commission that the contracts with Seatrain should be disregarded as binding obligations upon plaintiff, plaintiff at the hearing before the Commission presented evidence referred to in paragraph XII which was received and was uncontradicted, showing that the negotiations between plaintiff and Seatrain were initiated and an agreement arrived at between them when plaintiff was under entirely separate ownership and management and before Seatrain had acquired plaintiffs' stock. The record before the Commission contains the following: (reference being to pages of the stenographic minutes of the hearing before the Commission).

"The Witness: There are just two major points about these negotiations: one, Seatrain took the position that if it docked its ships on the Hoboken, the Hoboken would benefit by a very substantial increase in traffic.

It had been having a hard time, we knew, and needed more traffic.

We were not familiar at that moment with the financial condition of the Hoboken. Seatrain took the position that therefore, if it was to supply facilities to be used in interchange, that the Hoboken should make a contract with Seatrain, the same as they did with the other water lines at Hoboken, and contract with Seatrain to make the interchange.

In other words, we insisted upon the usual practice of the rail carrier contracting with a steamship line to actually make the interchange in connection with its own loading and discharging operations.

[fol. 14] By Mr. McCollester:

Q. And making a payment to the steamship line for performing the service?

A. And reimbursing, obviously, the steamship line for whatever work it did, for whatever facilties it supplied, in order to perform that work in conjunction with her own loading and discharging operations.

Q. And at that time you were dealing with the officers of the Hoboken Manufacturers' Railroad Company when it was an entirely separate corporation from anything in which you or Seatrain had an interest; is that correct?

A. That is correct, we had no thought or desire at that time to buy a railroad.

Now, in discussing with Mr. Milbauer and Mr. Diener this question of a contract, they showed us their arrangements or told us of their arrangements with other water lines, and how much they paid them, and they told us what their conditions were with the trunk lines out of which they paid the steamship lines.

The thing we were most interested in, of course, was the division of $1.35 on lighterage free freight. It was our conception at that time that Seatrain freight

would be lighterage free freight, practically one hundred per cent.

Q. Well, you assumed that the divisional arrangement providing for the $1.35 division was in terms which applied to—which would apply to Seatrain traffic; is that correct?

A. That is correct. In other words, to take it another way: on freight which is not lighterage free, Hoboken did not contact [contract] with any steamship line to interchange freight. It wasn't their obligation.

So that freight just didn't come into discussions.

There is no obligation on the part of the Hoboken to load or unload, or make any interchange at all on the steamship lines.

Examiner Hoy: I think your answer is complete on that, Mr. Brush.

[fol. 15] The Witness: Therefore, the discussions which we had, which I want to make entirely clear, were on the basis of Seatrain's freight being lighterage free freight, and Hoboken's allowance being $1.35, and we insisted, and the Hoboken management accepted the proposition, that they would advise the trunk lines of a reduction in their voluntary reduction in their allowance on Seatrain freight to $1 per ton, thereby giving the trunk lines a saving of 35c per ton on every ton of traffic moving to and from Seatrain vessels, versus vessels of Seatrain's competitors and other water lines at Hoboken.

When we came to the question of putting in these facilities——

By Mr. McCollester:

Q. Before you come to that, did your negotiations also contemplate a payment by Hoboken to Seatrain, and what was that payment?

A. Yes, I failed to tell the balance of the story. As Hoboken was paying the steamship lines varying amounts at varying times, but in the neighborhood of somewhere from sixty-five cents to seventy-five cents per ton, the arrangement was for the Hoboken to pay Seatrain forty cents per ton, but the forty cents per ton was to cover something more than the loading and unloading of the cars, or any other checking or bracing and so forth and so on." (pp. 146-149)

• • • • • • •

"Q. Now, right there, Mr. Brush, let me ask you this: Seatrain's invention is patented, is it not?

A. That is correct.

Q. And that patent is a combination patent relating to the use of a crane or some sort of elevating device, a cradle to be lowered to a track, or raised and lowered into a vessel, and a vessel in the interchange of cars between a vessel and a railroad; is that correct, in general?

[fol. 16] A. Well, I wouldn't give you any aid on your patent law but—yes, it is a combination patent.

Q. That is what I mean.

A. In other words, it is not a vessel, it is not a terminal, it is not a crane; it is a combination of various devices, which, when all put together, form the Seatrain terminal and ship.

You cannot separate it. You cannot say that it begins at any one point. It is the whole thing, from the beginning, from the dock and the crane and the ship, going right straight through.

Q. Now, the Hoboken Manufacturers' Railroad could not, even though it had a crane, use that crane for interchanging cars with a steamship in the manner in which cars are interchanged with Seatrain, without permission under the patent, could it?

A. No, no one could.

Examiner Hoy: Aren't we getting into patent law now?

Mr. McCollester: We are, Mr. Examiner, and I think it is pertinent.

Mr. Eshelman: Might I have that question and answer?

(The question and answer were read by the reporter.)

By Mr. McCollester:

Q. Now, neither could the Hoboken Manufacturers' Railroad achieve the savings in interchanging freight with Seatrain or any other steamship line in the manner in which it is interchanged with Seatrain, without the use of the patent, could it?

A. No.

Q. Nor handle an increased volume of freight to be transferred between railroad and ship in a manner resulting in those savings, without the consent of the holder or licensee of the patent; is that correct?

[fol. 17] A. Well, if I understand your question correctly, you are asking me to say whether, back in 1932, or the latter part of 1931, when we were negotiating with Mr. Milbauer and Mr. Diener and they were looking for additional traffic—that in so far as Seatrain was concerned, they couldn't have had the additional traffic without the use of the patent?

Q. That is right.

A. Is that the question?

Q. That is the question.

A. No.

Q. And they couldn't have had the use of any other additional traffic to be handled in the same way, without the use of the patent, could they?

A. No.

Q. And the license under the patent is held by Seatrain, is it not?

A. Yes, and Seatrain pays substantial royalties, and those rates were based on this particular—one of the major considerations was this ability to do things cheaply, cheaper than somebody else could do them.

Q. And was part of the consideration for this proposed payment of forty cents, as it was originally, the use of Seatrain's patented device?

A. Certainly, because it is a part of Seatrain's costs. Seatrain wasn't going to go around and give its patents, on which it was paying royalties, to somebody for nothing.

Q. Now, at this time—when you were negotiating with the officers of Hoboken Manufacturers' Railroad, when it was entirely independent of your company, were the terms of the proposed arrangement, as you have indicated it, agreed to by them?

A. Yes." (pp. 150-153)

. . . . . .

[fol. 18] "Q. Did you, after Seatrain acquired the ownership of the stock of Hoboken, enter into contracts between Seatrain and Hoboken on those terms?

A. Yes, we entered into the same contract that we would have made if we had—would have made with the Chapman interests.

Q. And as had been agreed to with the Chapman interests?

A. And as agreed to." (R. 160)

XV

Plaintiff also offered other evidence at the hearing before the Commission which the Commission's Examiner excluded. This offer and the Examiner's rulings appear at pages 127-144 inclusive of the stenographic minutes of the hearing before the Commission. In substance, the evidence offered would have shown that before Seatrain entered into negotiations with plaintiff for the establishment of its terminal at a pier served by plaintiff, it had had negotiations with some of the trunk line railroads, defendants in the proceeding before the Commission; that in these negotiations one of the terms had been that in consideration of the use by Seatrain of its vessels and its patented labor-saving devices and the advantages resulting to the railroads therefrom, a payment should be made to Seatrain, and that the trunk line railroads had taken no exception thereto.

XVI

In its original report the Commission found and determined in effect that the payments made by plaintiff to Seatrain under the contracts with the latter might properly be considered part of plaintiff's costs for the determination of its divisions either if such payments were made for the performance by Seatrain for plaintiff's account of services coming within plaintiff's transportation services under the rates to be divided, or if such payments were "necessary for the purpose of inducing the new method of transfer" af- [fol. 19] forded by means of Seatrain's devices, with the savings in labor and transfer expense and the benefits of the expected additional traffic resulting therefrom. On the first point the Commission found:

> "For purposes of its own, Seatrain prefers to receive and deliver the loaded car. The unloading or loading of the car lading and its delivery or receipt at ship's tackle is therefore unnecessary. The rail lines do all that is required when they place the cars in or take them from the Seatrain cradle. From this point of view the payments which complainant makes to Seatrain cover no part of its transportation service under

the lighterage-free rates and are in addition to the full costs of that service."

On the second point the Commission found:

"While, therefore, the payments are not made for any service which the rail lines perform under the lighterage-free rates, there is a remaining question whether such payments may be justified, in any way and to any extent, as compensation properly payable to Seatrain for the savings which it has accomplished for the rail lines by its new method of transfer. The new method of transfer puts the connecting rail lines to less expense under the lighterage-free rates than the old method. It may be argued, therefore, that they would be justified in making any payments that might be necessary for the purpose of inducing the establishment of the new method of transfer, provided they were left with a net saving. There is here no evidence, however, that payments were or are necessary for this purpose. The contract between Seatrain and complainant, to which defendant rail lines are not parties, is not evidence to this effect, in view of the control which Seatrain exercises over complainant. No such payments have, so far as the record shows, been exacted or obtained by Seatrain from an independent rail connection. There is ample reason to conclude, also, that the improved method of transfer is only an incident to the Seatrain plan of transportation, and that this plan has sufficient advantages to impel its use and pro- [fol. 20] motion by Seatrain regardless of any contributory payments from rail connections."

XVII.

The Commission's order dismissing the complaint was null and void and should be set aside and annulled because it was and is invalid and erroneous as a matter of law and was based upon the foregoing findings and conclusions of the Commission in its report which were in error as a matter of law and without support in and contrary to the evidence before the Commission in the respects and for the reasons following:

(a) The Commission's order dismissing the complaint was in error as a matter of law and the Commis-

sion in making and entering said order failed to fulfill its duty under the Interstate Commerce Act in failing by order to prescribe the just, reasonable and equitable divisions of the joint rates involved to be received respectively by plaintiff and its trunk line railroad connections.

(b) The Commission's finding and conclusion that the amount of 60 cents per ton (as later increased to 63 and 66 cents per ton) paid to plaintiff by its trunk line connections and received by plaintiff as payment on account and under protest constituted adequate, just, reasonable and lawful divisions of joint through lighterage-free or shipside rates on freight delivered by plaintiff to or received by it from the vessels of Seatrain Lines, Inc., were arbitrary and contrary to and without support in the evidence before the Commission.

(c) In finding and concluding that the payments made by plaintiff to Seatrain under the contracts between them were not made for services coming within plaintiff's transportation service and obligations under the rates involved, and for that reason did not constitute expenses of plaintiff to be included in its costs of handling freight transported under the "lighterage-free" rates to be divided, the Commission erred as a [fol. 21] matter of law, in that some or all of the services for which such payments were made were within the transportation service and obligation of plaintiff under such rates.

(d) In finding and concluding that the payments made by plaintiff to Seatrain under the contract between them did not constitute expenses of plaintiff to be included in its cost of handling freight transported under the rates to be divided for the reason that in view of the corporate relationship between plaintiff and Seatrain, the contract between plaintiff and Seatrain could not be accepted as evidence that the payments were necessary to secure for plaintiff the benefits of the contract, the Commission erred as a matter of law in that its decision amounts, in substance, to a conclusion denying effect to valid contracts between a parent

corporation and a subsidiary, merely because of their corporate relationship, where there was no evidence that the corporate relationship was improperly availed of or that the contracts would not have been proper contracts under other circumstances.

(e) In making the finding and conclusion referred to in the foregoing paragraph (d), the Commission erred as a matter of law in failing to find that although in view of the corporate relation the Commission should scrutinize the contracts and the circumstances under which they were made, in order to determine whether the payments were reasonable payments for the consideration derived by plaintiff under the contracts, it should have found and concluded that all or so much of said payments as constituted reasonable compensation to be paid by plaintiff for the benefits secured by it under the contracts, should be included in plaintiff's costs for the purpose of fixing the divisions of the joint rates involved.

(f) The Commission erred as a matter of law and its decision was arbitrary and in disregard of the evidence before it in that the Commission failed to find that the benefits secured by plaintiff under the con- [fol. 22] tracts, including the method of interchange made possible by Seatrain's devices, the undertaking of Seatrain to relieve plaintiff of its obligation under the "lighterage-free" rates to load and unload cars and to furnish dunnage, bracing and other materials and labor necessary therefor, and the added traffic secured by plaintiff from its interchange with Seatrain, constituted good and adequate consideration for the contracts and for plaintiff's payments to Seatrain thereunder which rendered such payments necessary factors of plaintiff's costs of handling the traffic involved.

(g) In attempting to support its conclusion by finding "No such payments have, so far as the record shows, been exacted or obtained by Seatrain from an independent rail-connection," the Commission arbitrarily disregarded uncontradicted evidence before it that the payments had been agreed to by plaintiff when plaintiff itself was "an independent rail connection"

and that the contracts entered into after Seatrain had acquired plaintiff's stock merely carried into effect the terms of the agreement entered into when plaintiff was entirely independent and under separate management. In making this finding, and also in referring to the fact that the defendant rail lines were not parties to the contract between plaintiff and Seatrain, the Commission also acted arbitrarily in that such findings would not have been possible had the Commission's Examiner not excluded evidence offered by plaintiff, as described in paragraph XV, as to preliminary negotiations with plaintiff's trunk line connections, or had the Commission granted the rehearing prayed for by plaintiff for the receipt of such evidence.

(h) Since the evidence showed without contradiction and the Commission apparently found that plaintiff would not be able to make the payments to Seatrain called for by the contracts unless it was accorded divisions based on including such payments in its costs of performing transportation service covered by the rates to be divided, the Commission erred as a matter of law [fol. 23] in treating the terms of the contracts as valid and enforceable to the extent of basing its conclusion on the assumption that plaintiff would continue to enjoy the advantages of the contracts, while at the same time depriving plaintiff of the means of performing its side of the contracts and of making the payments called for thereby.

(i) The Commission erred as a matter of law and its decision was arbitrary and without any support in the evidence in that the Commission found and concluded in substance that, because Seatrain owns plaintiff's stock, plaintiff could continue to expect that it would receive the benefits of the contracts and the use of Seatrain's facilities and patented devices without paying compensation therefor.

(j) The Commission similarly erred in concluding that in order to secure the benefits of the contracts, plaintiff was under no necessity of paying the consideration provided in the contracts and in concluding without any support in the evidence that "there is ample reason to conclude, also, that the improved

method of transfer is only an incident to the Seatrain plan of transportation, and that this plan has sufficient advantages to impel its use and promotion by Seatrain regardless of any contributory payments from rail connections."

(k) The Commission erred in failing to find that if plaintiff is not entitled to divisions based on including the payments to Seatrain in its costs, the result is to transfer to plaintiff's trunk line connections the entire benefit of the saving in interchange expense effected by Seatrain's patents and by the investment of both plaintiff and Seatrain in the special facilities used in the interchange of cars between plaintiff and Seatrain and the cost of operation thereof without any compensation by said trunk line connections therefor and that such divisions are not the just, reasonable and equitable divisions which the Commission is required by Section 15(6) of the Interstate Commerce Act to prescribe.

[fol. 24] (l) The Commission erred as a matter of law in failing to find that the amount of 60 cents per ton (as later increased to 63 and 66 cents per ton) paid to plaintiff by its trunk line connections, which covered only plaintiff's costs of switching and afforded it no compensation for or reimbursements of payments made by plaintiff to Seatrain under the contracts and that the amounts retained by plaintiff's trunk line connections which were substantially greater than their divisions out of lighterage free rates on freight delivered to or received from the vessels of other steamship lines without any additional service being performed by said trunk lines to earn such greater divisions, were not the just, reasonable and equitable divisions of the rates involved, required by Section 1(4) of the Interstate Commerce Act which the Commission by Section 15(6) of said Act was required to prescribe.

(m) The Commission erred as a matter of law and its decision and order were arbitrary and contrary to the evidence in that the effect of the Commission's conclusions and findings and its order dismissing the complaint is to compel plaintiff to perform transportation under the rates involved at less than its cost of so doing. For this reason also the Commission's determination

and order are null and void in that their effect is to deprive plaintiff of its property without due process of law and to take its property for public use without just compensation in violation of the Fifth Amendment to the Constitution of the United States.

XVIII

Plaintiff is without any adequate remedy at law in the premises.

Wherefore plaintiff prays:

First.—That pursuant to the Urgent Deficiencies Act, 38 Stat. 220, as re-enacted as Section 47 of Title 28, U. S. C. A., [fol. 25] a Court of three judges, one of whom shall be a circuit judge, shall be convened to hear this case.

Second.—That after such hearing, an order may issue decreeing that said order of the Commission of July 24, 1939 is null and void and setting it aside, annulling and suspending it, and directing and enjoining the Commission to reinstate the proceeding before it and thereupon to issue and enter therein a report containing lawful findings and conclusions and an order in accordance therewith determining and prescribing the just, equitable and reasonable divisions of the joint through rates involved to be received respectively by plaintiff and the trunk line railroads, defendants in said proceeding.

Third.—That the Court may direct the Commission that in determining such divisions the payments made by plaintiff under its contracts with Seatrain Lines, Inc., shall be considered by the Commission as part of plaintiff's costs of handling the traffic and that plaintiff's divisions to be prescribed shall be based upon and shall compensate plaintiff for such costs as well as plaintiff's costs for switching alone.

Fourth.—That plaintiff may have such other and further relief as may be proper in the premises.

Respectfully submitted, Parker McCollester, Attorney for Plaintiff, Office and Post Office Address, 25 Broadway, New York, N. Y.

John Drewen, 921 Bergen Avenue, Jersey City, N. J., Resident counsel designated under Rule 3; Lord, Day & Lord, 25 Broadway, New York, N. Y., of Counsel.

[fol. 26] EXHIBIT "A" TO PETITION

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 27630

HOBOKEN MANUFACTURERS' RAILROAD COMPANY,
Complainant,

against

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY (H. B. Stewart and George E. Hagenbuch, Trustees), et al., Defendants

COMPLAINT

The complaint of the Hoboken Manufacturers' Railroad Company respectfully shows and alleges:

1. Complainant is a corporation organized and existing under the laws of the State of New Jersey, with its principal office in that State. It is a common carrier by railroad engaged in the transportation of property by railroad and, in connection with certain water carriers, in the transportation of property partly by railroad and partly by water in interstate commerce and as such is subject to the provisions of the Interstate Commerce Act. Its line of railroad is located in Hoboken, New Jersey, along the waterfront of New York harbor. It operates its line of railroad as a switching line. It has direct rail connection with defendant Erie Railroad Company and through such connection interchanges freight with other railroads reaching New York [fol. 27] Harbor (hereinafter with the Erie Railroad referred to as "Eastern Trunk Line railroads"). It transports freight in such switching service between its said connection with the Erie Railroad on the one hand and its team tracks, private side tracks of industries connecting with its line and steamship piers served by its line or side tracks connecting therewith on the other hand, including the pier used by the vessels of defendant Seatrain Lines, Inc., and it delivers to and receives from the vessels of Seatrain Lines, Inc., freight interchanged or to be interchanged with defendant Erie Railroad and through it with other Eastern Trunk Line railroads.

2. Defendants named in Appendix A attached hereto and made a part hereof are corporations organized and existing

under the laws of various states and are common carriers by railroad engaged in the transportation of property by railroad and partly by railroad and partly by water in interstate commerce and as such are subject to the provisions of the Interstate Commerce Act.

3. Defendant Seatrain Lines, Inc., is a corporation organized and existing under the laws of the State of Delaware and is a common carrier by water engaged in the transportation of property partly by railroad and partly by water under an arrangement or arrangements for through transportation or carriage. Its vessels dock at a pier served by the line of complainant at Hoboken, New Jersey.

4. Complainant and Eastern Trunk Line railroads, defendants, individually or collectively, are parties to numerout joint through class and commodity rates provided in tariffs lawfully published and on file with this Commission appplicable to freight originating at or destined to points on the lines of other defendants' connections therewith, which freight is delivered by complainant to or received by it from the vessels of Seatrain Lines, Inc., at Hoboken [fol. 28] and transported by it between its points of interchange with such vessels and its rail connection with the Erie Railroad.

5. Complainant is also a party to joint through class and commodity rates published or participated in by defendants Southern and Southwestern railroads and Seatrain Lines, Inc., as well as by defendants Eastern Trunk Line railroads, which rates are provided in tariffs lawfully published and on file with this Commission, and are applicable to the transportation of freight between New Orleans, Louisiana, and points in the South and Southwest on the lines of defendants Southern and Southwestern railroads on the one hand and points on the lines of defendants Eastern Trunk Line railroads and their connections on the other ha-d via the lines of said defendants, or certain of them and the line of defendant Seatrain Lines, Inc.

6. The class rates referred to in the two foregoing paragraphs and many of the commodity rates there referred to were established pursuant to findings or orders of this Commission.

7. Complainant and defendant railroads or most of them are defendants in a proceeding entitled "*Seatrain Lines, Inc., Complainant,* v. *The Akron, Canton & Youngstown Railway Company, et al., Defendants.*" Docket No. 25727 on the docket of this Commission. In this proceeding said Seatrain Lines, Inc., seeks an order by this Commission requiring the establishment by defendants of additional joint through rates for through transportation between points on their respective lines *via* the lines of Seatrain Lines, Inc., and also, with respect to transportation for which joint through rates are not established, requiring the establishment of local or proportional rates *via* the lines of the Eastern Trunk Line railroads, defendants, and the line of complainant to and from Hoboken, New Jersey, applicable to freight delivered by complainant to or received by it from the vessels of Seatrain Lines, Inc.

[fol. 29] 8. With respect to the rates described in the three foregoing paragraphs, complainant is informed and believes and, therefore, alleges that such rates are customarily divided in the first instance between defendants Southern and Southwestern railroads and defendant Seatrain Lines, Inc., on the one hand, and defendant Eastern Trunk Line railroads, their connections and complainant on the other hand, and that customarily any divisions payable to complainant are payable to it out of the primary divisions accruing to defendants Eastern Trunk Line railroads and their connections.

9. For a long period there has been in effect an agreement or arrangement between complainant and the Eastern Trunk Line railroads defendants, pursuant to which the complainant has received as its divisions out of joint rates to which it is and has been a party (except out of the rates on silk, the divisions of which were determined and prescribed by this Commission) a division of $1.35 per ton on freight loaded to or unloaded from cars by complainant or at its expense and a division of 60 cents per ton on freight loaded to or unloaded from cars at the expense of the shipper or consignee, including steamship lines to which freight is delivered or from which it is received by complainant.

10. The vessels of defendant Seatrain Lines, Inc., have operated to and from piers served by complainant at Hobo-

ken, New Jersey, since October 5, 1932. Since that time complainant has transported and is continuing to transport and will in the future transport large quantities of freight moving under joint through rates of one or another of the kinds above described to which it is or will be a party.

11. Since the foregoing arrangement or agreement with respect to divisions, described in paragraph 9, relates to freight loaded or unloaded to or from cars, the amount of the division depending upon whether the loading or unloading is done by or at the expense of complainant or by or at the expense of the shipper, consignee or steamship [fol. 30] line, the arrangement or agreement is without application in the case of freight delivered to or received from the vessels of Seatrain Lines by complainant whenever such freight is not unloaded from or loaded into cars but is interchanged with the vessels of Seatrain Lines in the same cars in which transported by complainant and interchanged by it with Eastern Trunk Line railroads defendants. Defendants have even denied the applicability of the agreement where freight delivered to or received from the vessels of Seatrain Lines is actually unloaded from or loaded into cars by complainant. Since the inception of the operations of Seatrain Lines, Inc., on October 5, 1932, complainant and defendants have been and they now are unable to agree upon the divisions to be received by them and by complainant out of any of the rates of the kinds previously described to which complainant is a party, and applicable to the transportation of freight delivered to or received from the vessels of Seatrain Lines, Inc.

12. The amounts heretofore retained by said Eastern Trunk Line railroads defendants have been and for the future will be excessive, unjust, unreasonable, inequitable and unduly preferential of said defendants and the amounts paid to complainant by defendants have been and for the future will be inadequate, confiscatory, unjust, unreasonable, inequitable and unduly prejudicial to complainant as divisions of such rates in violation of Section 1 (4) of the Interstate Commerce Act; and the payments of such amounts to complainant have been and will continue to be received by complainant under protest and as payment on account of just, reasonable, equitable and non-prejudicial divisions.

Wherefore, complainant prays that the Commission, pursuant to the provisions of Section 15 of the Interstate Commerce Act, may call upon the defendants to answer the allegations of this complaint and that after due hearing and investigation an order may be made by the Commission requiring said defendants to cease and desist from the aforesaid violations of the Interstate Commerce Act. [fol. 31] Pursuant to such investigation, complainant prays that the Commission may determine what has been for the past and what will be for the future just, reasonable, equitable and non-prejudicial or non-preferential divisions to be received by defendants and by complainant, respectively, out of the rates hereinbefore described, now in effect or hereafter to be established, both local and proportional rates to or from Hoboken and joint through rates via Hoboken and the line of Seatrain Lines, Inc., on all freight transported by complainant, interchanged by it with the Eastern Trunk Line railroads defendants and delivered to or received by it from the vessels of Seatrain Lines, Inc.; and that the Commission may require defendants to cease from withholding for themselves and their connections, other than complainant, out of such rates, excessive, unreasonable, inequitable and preferential divisions thereof, and to establish and put in force and for the future allow and pay to complainant just, reasonable and equitable divisions; and that the Commission may require defendants to make adjustment with the complainant in accordance therewith on all freight transported by the complainant subsequent to the date of the filing of this complaint and moving under rates prescribed or to be prescribed by this Commission. And complainant prays for such other and further relief as in the premises may be proper.

Dated at New York, N. Y., December 30, 1936.

Hoboken Manufacturers' Railroad Company, by W. J. Mathey, its Vice-President, 39 Broadway, New York, N. Y. Parker McCollester, Lord, Day & Lord, Attorneys for Complainant, 25 Broadway, New York, N. Y.

[fol. 32] *Duly sworn to by W. J. Mathey, jurat omitted in printing.*

* * * * * * *

Appendix "A" to Exhibit "A"

Defendants in Central Freight Association, Trunk Line and New England Territories (referred to in the complaint as Eastern Trunk Line railroads and their connections):

The Ahnapee and Western Railway Company.
The Akron, Canton & Youngstown Railway Company.
(H. B. Stewart and George E. Hagenbuch, Trustees).
Alton & Eastern Railroad Company.
Alton and Southern Railroad.
The Alton Railroad Company.
The Androscoggin and Kennebec Railway Company.
The Ann Arbor Railroad Company.
(Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers).
[fol. 33] Aroostoook Valley Railroad Company.
Baltimore and Eastern Railroad Company.
The Baltimore and Ohio Railroad Company.
Bangor and Aroostook Railroad Company.
Bath and Hammondsport Railroad Company.
Belfast and Moosehead Lake Railroad Company.
Bellefonte Central Railroad Company.
The Belt Railway Company of Chicago.
Bessemer and Lake Erie Railroad Company.
Boston and Albany Railroad.
(The New York Central Railroad Company, Lessee).
Boston and Maine Railroad.
Canadian National Railway Company.
Canadian National Railways.
Canadian Pacific Railway Company.
The Central Railroad Company of New Jersey.
Central Vermont Railway, Inc.
The Chesapeake and Ohio Railway Company.
Chestnut Ridge Railway Company.
Chicago and Eastern Illinois Railway Company.
(Charles M. Thompson, Trustee).
Chicago and Erie Railroad Company.
Chicago and North Western Railway Company.
(Charles P. Megan, Trustee).
Chicago, Aurora and Elgin Railroad Company.
(A. A. Sprague and Britton I. Budd, Receivers).
Chicago, Burlington & Quincy Railroad Company.
Chicago Great Western Railroad Company.
(Patrick H. Joyce and Luther M. Walter, Trustees).

Chicago, Indianapolis and Louisville Railway Company.
(H. R. Kurrie and Holman D. Pettibone, Trustees).
Chicago Junction Railway.
(The Chicago River and Indiana Railroad Company, Lessee).
Chicago, Kalamazoo and Saginaw Railway Company.
(The New York Central Railroad Company, Lessee).
Chicago, Milwaukee, St. Paul and Pacific Railroad Company.
(Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees).
[fol. 34] Chicago, North Shore and Milwaukee Railroad Company.
(A. A. Sprague and Britton I. Budd, Receivers).
The Chicago, Rock Island and Gulf Railway Company.
Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees).
The Chicago, Rock Island and Pacific Railway Company.
(Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees).
Chicago, Saint Paul, Minneapolis and Omaha Railway Company.
Cincinnati & Lake Erie Railroad Company.
(Thomas Conway, Jr., and J. Harvey McClure, Receivers).
The Cincinnati Northern Railroad Company.
(The New York Central Railroad Company, Lessee).
Cincinnati, Saginaw and Mackinaw Rail Road Company.
(Grand Trunk Western Railroad Company, Lessee).
The Clarendon and Pittsford Railroad Company.
The Cleveland, Cincinnati, Chicago and St. Louis Railway Company.
(The New York Central Railroad Company, Lessee).
Condersport and Port Allegany Railroad Company.
The Dansville and Mount Morris Railroad Company.
The Delaware and Hudson Railroad Corporation.
The Delaware, Lackawanna and Western Railroad Company.
Detroit, Toledo and Ironton Railroad Company.
Elgin, Joliet and Eastern Railway Company.
Erie Railroad Company.
Fonda, Johnstown and Gloversville Railroad Company.
(J. Ledlie Hees, Trustee).

Grafton and Upton Railroad Company.
Grand Trunk Railway System.
(Lines in the United States, east of the west bank of the Detroit and St. Clair Rivers) comprising the following carriers:

Canadian National Railway Company.
The Champlain and St. Lawrence Railroad Company.
(Canadian National Railway Company, Lessee).
[fol. 35] The United States and Canada Rail Road Company.
(Canadian National Railway Company, Lessee).

Grand Trunk Railway System.
(Lines west of Detroit and St. Clair Rivers). Comprising the following carriers:
Grand Trunk Western Railroad Company.
Cincinnati, Saginaw and Mackinaw Rail Road Company.
(Grand Trunk Western Railroad Company, Lessee).
Illinois Central Railroad Company.
The Ironton Railroad Company.
(Lehigh Valley Railroad Company and Reading Company, Lessees).
Jamestown, Westfield and Northwestern Railroad Company.
The Lake Erie and Eastern Railroad Company.
The Lake Erie and Northern Railway Company.
Lake Erie, Franklin & Clarion Railroad Company.
The Lehigh and Hudson River Railway Company.
Lehigh and New England Railroad Company.
Lehigh Valley Railroad Company.
Ligonier Valley Rail Road Company.
The Long Island Rail Road Company.
Maine Central Railroad Company.
The Michigan Central Railroad Company.
(The New York Central Railroad Company, Lessee).
The New Jersey and New York Railroad Company.
The New York and Long Branch Railroad Company.
New York and Pennsylvania Railway Company.
The New York Central Railroad Company.
The New York, Chicago and St. Louis Railroad Company.
The New York, New Haven and Hartford Railroad Company.

(Howard S. Palmer, W. M. Daniels and James Lee Loomis, Trustees).
New York, Ontario and Western Railway Company.
New York, Susquehanna and Western Railroad Company.
New York, Westchester & Boston Railway Company.
Northampton and Bath Railroad Company.
Norwood & St. Lawrence Railroad Company.
[fol. 36] Pennsylvania and Atlantic Railroad Company.
Pennsylvania and Atlantic Railroad Company.
(South of Hightstown, N. J., to Pemberton, N. J., Inc.)
(The Union Transportation Company, Lessee).
The Pennsylvania Railroad Company.
Pere Marquette Railway Company.
The Pittsburg & Shawmut Railroad Company.
The Pittsburgh and Lake Erie Railroad Company.
Pittsburgh and Ohio Valley Railway Company.
The Pittsburgh & West Virginia Railway Company.
Pittsburgh, Chartiers & Youghiogheny Railway Company.
The Pittsburg, Shawmut & Northern Railroad Company.
(John D. Dickson, Receiver).
Rahway Valley Company.
(Rahway Valley Company, Lessee).
Reading Company.
Richmond, Fredericksburg and Potomac Railroad Company.
Rutland Railroad Company.
The St. Johnsbury & Lake Champlain Railroad Company.
Seatrain Lines, Inc.
Wabash Railway Company.
(Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers).
West Shore Railroad.
(The New York Central Railroad Company, Lessee).
The Wheeling and Lake Erie Railway Company.

Southern and Southwestern Railroads

Abilene & Southern Railway Company.
Arkansas & Louisiana Missouri Railway Company.
Asherton and Gulf Railway Company.
Ashley, Drew & Northern Railway Company.
Asphalt Belt Railway Company.

The Beaumont, Sour Lake & Western Railway Company. (Guy A. Thompson, Trustee).
The Chicago, Rock Island and Pacific Railway Company. (Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees).
[fol. 37] Cisco & Northeastern Railway Company.
The Denver and Rio Grande Western Railroad Company (Wilson, McCarthy and Henry Swan, Trustees).
Eastland, Wichita Falls & Gulf Railroad Company.
El Dorado and Wesson Railway Company.
Fort Smith and Western Railway Company (L. B. Barry, Jr., Receiver).
Graysonia, Nashville & Ashdown Railroad Company.
Houston and Brazos Valley Railway Company.
The International Bridge and Terminal Company.
Jefferson & Northwestern Railroad Company.
Kansas, Oklahoma & Gulf Railway Company.
Louisiana & Arkansas Railway Company.
The Louisiana and North West Railroad Company.
Louisiana, Arkansas & Texas Railway Company.
Missouri Pacific Railroad Company (Guy A. Thompson, Trustee).
New Iberia & Northern Railroad Company.
New Orleans and Lower Coast Railroad Company.
New Orleans, Texas & Mexico Railway Company (Guy A. Thompson, Trustee).
North Louisiana & Gulf Railroad Company.
Oklahoma City-Ada-Atoka Railway Company.
The Orange & Northwestern Railroad Company.
The Pecos Valley Southern Railway Company.
Rio Grande City Railway Company.
Roscoe, Snyder and Pacific Railway Company.
The St. Louis, Brownsville and Mexico Railway Company (Guy A. Thompson, Trustee).
San Antonio Southern Railway Company.
San Antonio, Uvalde & Gulf Railroad Company (Guy A. Thompson, Trustee).
San Benito and Rio Grande Valley Railway Company.
The Sibley, Lake Bisteneau & Southern Railway Company.
Sugar Land Railway Company.
The Texas and Pacific Railway Company.
Texas Electric Railway Company.

Texas-New Mexico Railway Company.
Texas Short Line Railway Company.
[fol. 38] Tremont & Gulf Railway Company.
Uvalde & Northern Railway Company.
Warren & Ouachita Valley Railway Company.
Warren & Saline River Railroad Company.
The Weatherford, Mineral Wells and Northwestern Railway Company.
Wichita Falls & Southern Railroad Company.

[fol. 39] EXHIBIT "B" TO PETITION

No. 27630

HOBOKEN MANUFACTURERS RAILROAD COMPANY

vs.

AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY, ET AL.

Submitted July 6 1939. Decided July 24 1939

Complainant's divisions of joint class and commodity rates applicable on traffic interchanged by it with Seatrain Lines, Incorporated, found not unjust, unreasonable, inequitable, or unduly prejudicial. Complaint dismissed.

Parker McCollester for complainant.

E. H. Burgess, F. R. Cross, J. F. Eshelman, P. F. Gault, T. P. Healy, and *W. T. Pierson* for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by complainant to the report proposed by the examiner, defendants replied thereto, and the issues have been orally argued.

Complainant alleges that the divisions it receives out of joint class and commodity rates on all traffic interchanged by it with Seatrain Lines, Incorporated, hereinafter referred to as Seatrain, were, are, and will be unjust, unreasonably low, inequitable, and unduly prejudicial to complainant and, conversely, that the divisions received by defendant rail lines out of such joint rates were, are, and for

the future will be unjust, unreasonably high, inequitable, *and unduly preferential of defendants in violation* of section 1 (4) of the Interstate Commerce Act. We are asked [fol. 40] to prescribe just, reasonable, and equitable divisions of such joint rates. The complaint is directed solely to the primary divisions between complainant, on the one hand, and defendant rail lines operating west of Hoboken, on the other.

Complainant is a single-track terminal-switching line extending along the water front of Hoboken, N. J., a distance of 1.632 miles. At its northern end, approximately at the boundary between the cities of Hoboken and Weehawken, N. J., it connects with the Erie Railroad and through it with other trunk lines reaching New York Harbor. Since August 1938 it has also had interchange with the Delaware, Lackawanna & Western Railroad through a float bridge. In addition to its main line, it has numerous yard tracks and sidings, a freight house, and team tracks. It serves numerous piers, at which various steamship lines regularly dock, and about 20 industries.

Seatrain is a common carrier by water subject to our jurisdiction under section 5 (19-21) of the Interstate Commerce Act. *Investigation of Seatrain Lines, Inc.*, 195 I. C. C. 215 and 206 I. C. C. 328. Since October 6, 1932, it has operated vessels, on which it transports freight in railroad cars, between Hoboken, N. J., and Belle Chasse, La., via Havana, Cuba. Belle Chasse is on the west bank of the Mississippi River about 10 miles south of New Orleans.

The value for rate-making purposes of complainant's property, owned or used, devoted by it to common-carrier purposes, was $1,625,000 as of December 31, 1933. *Hoboken Mfrs. R. Co.*, 47 Val. Rep. 476. Retirements to December 31, 1937, exceeded additions and betterments by $9,862, leaving a valuation of $1,616,138 as of the latter date.

All shares of complainant's capital stock, except five directors' qualifying shares, are owned by Seatrain. All of complainant's principal officers are officers of Seatrain, and six of complainant's seven directors are also directors of Seatrain.

Seatrain acquired control of complainant April 26, 1932, following negotiations entered into some time previously

[fol. 41] with a view to the establishment of a terminal on complainant's line. Thereafter, in order to provide a terminal for Seatrain and accommodate its anticipated traffic, necessary rearrangements and improvements of complainant's facilities were made and a crane was installed for use in making interchange with Seatrain's vessels.[1] This crane, which, with its substructure, cost about $85,000, together with the pier on which it is erected and a slip alongside the pier at which Seatrain vessels are berthed, is leased to Seatrain from complainant. The rental is based on complainant's expenditures for rent, taxes, insurance, depreciation, repairs, maintenance, and dredging, plus 6 per cent. return on complainant's investment in the property. The rental for the year beginning March 1, 1937, the effective date of the present contract, was $19,668.07 for the pier and slip and $13,219.16 for the crane.

The traffic which complainant interchanges with defendants may be divided into four general classes: (1) Carload freight from and to private sidings and team tracks, which is loaded and unloaded at the consignee's expense, (2) less-than-carload freight from or to complainant's freight house, which is loaded or unloaded by complainant, (3) freight from and to steamship lines other than Seatrain, and (4) freight from and to Seatrain. Some of the freight from and to Seatrain and some of that from and to other steamship lines moves under so-called lighterage-free rates and some under local or so-called non-lighterage-free rates. Under lighterage-free rates the rail carriers undertake to unload freight from the cars and place it within reach of ship's tackle or to receive freight at the foot of ship's tackle and load it into the cars; under non-lighterage-free rates they do not undertake to unload or load the cars.

Loaded cars for complainant are placed by the Erie on complainant's interchange tracks, where they are split up by complainant into those going south and those going

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[1] The method of interchanging freight with Seatrain is described in *Investigation of Seatrain Lines, Inc.*, 195 I. C. C. 215, 219. Briefly, the cars are transferred between the Railroad tracks and the vessel by use of a car cradle and crane.

[fol. 42] north of Fourteenth Street and those going to Seatrain. Approximately one-fifth of complainant's main line, some of its industries, and a few of the piers served, including Seatrain's, are north of Fourteenth Street.

Cars going to steamship lines other than Seatrain, nine of which dock at piers south of Fourteenth Street and two at piers north of Fourteenth Street, are held by complainant in its main yard north of Fourteenth Street until it receives orders from the steamships to bring the cars to the piers and are further classified by complainant in the main yard if a specified order of delivery of the cars is required, as is sometimes the case. When delivery of cars is ordered by the steamships, complainant places the cars on the piers if they have railroad tracks, and, if not, at the base of the pier. No further service is rendered by complainant if the cars move under non-lighterage-free rates. If, however, they move under lighterage-free rates, the cars are unloaded and the freight placed within reach of ship's tackle by complainant or at its expense. In handling freight from steamships other than Seatrain, complainant spots an empty car at the pier. If moving under a non-lighterage-free rate, the car is loaded at the expense of the steamship company or the shipper; if moving under a lighterage-free rate, it is loaded by or at the expense of complainant. The loaded cars are then moved by complainant without classification to the Erie interchange, where complainant's services terminate.

Cars for Seatrain are placed in a hold yard a short distance from Seatrain's pier, which is approximately 2,500 feet from the point of interchange with the Erie. They are switched from the hold yard to the pier in the order designated by Seatrain, usually one at a time, and placed on the car cradle, where complainant's services terminate. Cars coming from Seatrain are switched one at a time from the car cradle to the hold yard, from which strings of cars are switched to complainant's main yard. Those to be interchanged with defendants move to the Erie interchange if they contain domestic traffic; if they contain foreign [fol. 43] freight they are generally held on convenient tracks for inspection and other purposes and then moved to the Erie interchange. The Erie performs the classification as to line-haul carriers on all of the cars.

Traffic through the Delaware, Lackawanna & Western float bridge is interchanged at the float-bridge yard, and complainant's operations between such interchange and Seatrain's car cradle are substantially the same as between the Erie interchange and the car cradle.

The following table shows the number of carloads handled by complainant during the years 1936 and 1937:

	1936	1937
Carload traffic interchanged with Seatrain		
Carload traffic interchanged with Seatrain and trunk lines [1]	6,517	6,611
Carload traffic interchanged with Seatrain [2]	2,710	2,634
Less-than-carload traffic interchanged with Seatrain [2]	443	388
All other traffic [3]	5,291	6,166
Total	14,961	15,799

[1] Only divisions of rates on this traffic are here in issue.

[2] Traffic originating on or destined to points on complainant's line.

[3] Traffic moving between points on complainant's line or traffic originating on or destined to points on complainant's line and interchanged with trunk lines but not with Seatrain.

During the month of May, July, September, and November, 1936, and January and March, 1937 complainant interchanged 2,961 carloads with Seatrain and the trunk lines. The average weight of these carloads was 57,011 pounds or 28.5 tons. Approximately three-fourths of the cars moved in coastwise service and one-fourth originated in or were destined to Cuba. Approximately 40 per cent of the cars moved under lighterage-free rates and 60 per cent under non-lighterage-free rates.

While complainant is a short terminal-switching line, it has for many years participated in joint rates with defendants and received divisions thereof. The divisions received by complainant are as follows:

[fol. 44]

	Prior to Ex Parte No. 123	Under Ex Parte No. 123 [1]	Under Ex Parte No. 123 [2]
Carloads loaded or unloaded by complainant or at its expense (per ton)	$1.35	[3] $1.41	[3] 1.38
Carloads loaded or unloaded by shipper or consignee or at their expense (per ton)	.60	.66	.63
Less-than-carload freight (per ton)	1.45	1.60	1.52
Automobiles (per car)	8.00	8.80	
Ice (per car)	4.75	5.23	
Silk (per 100 pounds)	.15	.165	

[1] When rate was increased 10 per cent.

[2] When rate was increased 5 per cent.

[3] Complainant has assailed these divisions in Docket No. 28078, not heard, correspondence in which indicates parties have agreed that such divisions should be increased to $1.49 and $1.42, respectively.

Only the first two items relate to this proceeding. The $1.35 and 60-cent divisions referred to therein were established as a result of a compromise agreement between defendants and complainant in 1927, prior to the inauguration of Seatrain service and when complainant was owned and operated by the United States Government.

As fully described in *Investigation of Seatrain Lines, Inc., supra*, the cars as well as the freight therein are interchanged between Seatrain vessels and the rail lines, and one of the advantages of the Seatrain service is that the expense of loading and unloading freight to and from the cars, necessary to through transportation in connection with other water carriers, is not necessary to through transportation in connection with Seatrain. While some of the cars to and from Seatrain are unloaded and reloaded, as will hereinafter more fully appear, the great bulk of the freight is neither loaded nor unloaded on complainant's line. Because there is no necessity for loading or unloading to effect interchange, defendants, ever since the inauguration of Seatrain service, have paid complainant a

division of 60 cents[2] on all freight interchanged by it with Seatrain, whether moved on lighterage-free or non-lighterage-free rates, except that for a short period two of defendants paid complainant a division of $1 per ton on all Seatrain traffic.

[fol. 45] Complainant seeks division of 60 cents per ton out of non-lighterage-free rates and $1.35 per ton out of lighterage-free rates. In other words, it is satisfied with its division out of non-lighterage-free rates if it receives $1.35 as its division of the lighterage-free rates. Whether it is entitled to a greater division out of the lighterage-free rates depends in large part on whether certain payments which complainant makes to Seatrain may be properly included in its costs for performing its part of the rail transportation to and from Hoboken.

The payments referred to above result from contracts between complainant and Seatrain. The original contract entered into November 21, 1932, provided that complainant should pay Seatrain 40 cents per ton on all freight, other than coal, interchanged between them. A part of the consideration for this payment was that Seatrain, as agent for complainant, should move the cars between complainant's hold yard and Seatrain's car cradle, the agreed point of interchange. This contract was superseded effective March 1, 1937, by a contract, still in effect, which provides that complainant shall pay Seatrain 73 cents per ton[3] on all freight interchanged between them which moves on lighterage-free rates but nothing on freight moving on non-lighterage-free rates. Under this contract Seatrain does not move the cars between complainant's hold yard and the car cradle, all such service being performed by complainant. The underlying justification for these payments is that, as it is not necessary to load and unload freight to and from railroad cars in making interchange with Seatrain, defendants are relieved of an expense of 75 cents per ton for loading or unloading which they incur when freight

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[2] The divisions referred to will be those in effect prior to the increases in Ex Parte No. 123 unless otherwise indicated.

[3] Subject to revision because of increase or decrease in the scale of longshoreman's wages but not as yet revised.

moving under lighterage-free rates is interchanged with other water carriers, and that, as this saving is possible because of Seatrain's investment and use of patented devices, such saving should accrue to Seatrain and not to defendants.

[fol. 46] In 1936 complainant paid Seatrain under the 1932 contract approximately $110,000 on the 9,227 cars interchanged, and in 1937, when the 1932 contract was in effect for the first 2 months and the 1937 contract in effect for the other 10 months, complainant paid Seatrain $9,856.36 less than it would have paid if the 1932 contract had been in effect during the entire year, or approximately $100,000 on the 9,245 carloads interchanged. The average loading of these cars was approximately 30 tons, and the payments averaged about $12 per car on all cars interchanged in 1936, $22 per car on the approximately 50 per cent of the cars interchanged in 1937 that moved under lighterage-free rates, and nothing on the approximately 50 per cent that moved under non-lighterage-free rates.

The United Railways of Havana, which interchanges with Seatrain at Havana, and the New Orleans & Lower Coast Railroad, which interchanges with it at Belle Chasse, do not make similar payments to Seatrain. The rates of the United Railways of Havana are stated to be equivalent to non-lighterage-free rates, and, if it were required to make such a payment to Seatrain, its net revenues would be less than on traffic via break-bulk carriers. For this reason Seatrain considers that its investment and patents are used at Havana in its own service and not in the service of United Railways. The reason given for not demanding a similar payment from the Lower Coast is that the location of Seatrain's terminal at Belle Chasse saves it about 17 miles of steaming to the city-front piers in New Orleans, which Seatrain considers a valuable consideration to it, and, further, that if such a payment were demanded and the line-haul carriers had to absorb it they would have to absorb more than on traffic via the break-bulk lines, which Seatrain considers would be unfair to them.

The Seatrain patents, which, unless renewed, will expire in about 6 years, are owned by Railway Transports, Incorporated, and Seatrain, as the exclusive licensee of the owner, pays royalties of approximately $50,000 a year.

[fol. 47] Complainant shows its average costs for switching all cars, including those containing less-than-carload freight, in 1936 and 1937. These costs include all taxes, other than those billed to Seatrain, the net amounts paid for all rents, including those for all leased road, and all interest on indebtedness, but do not include payments of 40 or 73 cents per ton to Seatrain or expenses incurred in connection with the handling of freight. The total costs were divided by the number of all loaded cars handled in common-carrier service, 14,961 in 1936 and 15,799 in 1937, and also by the number of tons handled, 411,757 in 1936 and 431,252 in 1937. The average costs so determined were $15.34 per cent and 55.7 cents per ton in 1936 and $16.11 per car and 59 cents per ton in 1937. The average loading was 27.5 tons in 1936 and 27.3 tons in 1937.

Assuming that all items included in the costs are properly so included, and, as complainant assumes, that its average costs for switching all cars reflect its cost for the movement here involved, its costs are less than its divisions of 69 cents per ton prior to the increases in Ex Parte No. 123; and 63 and 66 cents per ton since, and less than its revenues per car under such divisions. As previously stated, the average loading of the 2,961 carloads interchanged by complainant with Seatrain and defendants during the six alternating months of 1936 and 1937 was 28.5 tons. Other evidence of record indicates that the average loading of Seatrain traffic interchanged with defendants is approximately 30 tons. Complainant's revenues per car under the 60-cent division would be $17.10 and $18 based on average weights of 28.5 and 30 tons. The present divisions of 63 and 66 cents would have averaged 65.48 cents per ton on the 2,961 carloads referred to above. Based on that average, complainant's revenues per car of 28.5 tons and per car of 30 tons would be $18.66 and $19.64, respectively.

The fixed charges for rent of road and interest on indebtedness included by complainant in its costs were $54,729.60 in 1936 and $59,149.86 in 1937. If there were substituted for these fixed charges $80,806.90, which is a 5 per cent return on the value of the property owned or used by [fol. 48] complainant and devoted to common-carrier purposes, $1,616,138 as of December 31, 1937, the average cost for switching of cars would have been $17.08 in 1936 and $17.50 in 1937, as compared with revenues of $17.10 per

car of 28.5 tons under the 60-cent division and $18.66 under an average division of 65.48 cents.

The record warrants the conclusion that the former division of 60 cents and the present divisions of 63 and 66 cents are sufficient to cover the cost of the service performed by complainant and also a reasonable return on the property owned or used by it in performing such service.

Complainant, according to its books, had deficits in net income of $512.02 in 1936 and $21,474.60 in 1937. When the figures are adjusted to include only the items which complainant states were applicable to each of those years, a net income of $7,508.77 is shown in 1936 and a deficit of $50,307.27 for 1937. The principal adjustments were the elimination from the 1937 railway operating revenues of $24,586.58 of emergency charges under Ex Parte Nos. 103 and 115 credited during that year but applicable on traffic moving in prior years, and the inclusion in the 1936 railway operating revenues of $8,756.75 emergency charges applicable on traffic moving during that year.

In both the book figures and the adjusted figures, complainant includes in railway operating revenues the amounts claimed by it during those years as divisions on Seatrain traffic interchanged with defendants, namely, $1 per ton on all of such traffic for 1936 and the first 2 months of 1937, and 60 cents per ton on traffic moving under non-lighterage-free rates and $1.35 per ton on traffic moving under lighterage-free rates for the last 10 months of 1937, less a reserve of 25 cents per ton on all traffic for 1936 and the first 2 months of 1937 and a reserve of 60 cents per ton on lighterage-free traffic for the last 10 months of 1937, which reserves were set up because of the failure of complainant and defendants to agree on the divisions. The reserve so set up for 1936 was $42,251.33. If it had been based on 40 cents per ton, the full difference between the division actually received and that claimed, it would have [fol.49] been $25,350.78 greater, and the adjusted net income for that year, instead of being $7,508.77, would have shown a deficit of $17,842.01. While the record does not show how much of the Seatrain traffic interchanged between complainant and defendants in 1937 moved during the first 2 months and how much during the last 10 months, or how much of the latter moved under lighterage-free rates, it does show that the reserve set up for 1937 was

$48,527.95 and that, if it had been set up on the same basis as for 1936, it would have been $46,146.58. The latter figure indicates that 184,586 tons were interchanged, and, assuming that one-sixth thereof was interchanged during the first 2 months, when the reserve was set up on the basis of 25 cents per ton, the reserve set up for those 2 months was $7,691, and the balance set up for that year, $40,836.95, represents 68,062 tons of lighterage-free freight interchanged during the last 10 months of the year, on which the reserve was set up on the basis of 60 cents per ton. The record accordingly indicates that, if the reserve for 1937 had been set up on the basis of the full difference between the divisions actually received and those claimed, it would have been $55,661.10 greater and the adjusted net deficit for that year would have been $105,968.37 instead of $50,307.27.

From the above it appears that, if complainant's adjusted net income were further adjusted to the basis of the revenues actually received, it would have had deficits of approximately $18,000 in 1936 and $106,000 in 1937. If, however, complainant had not paid Seatrain approximately $110,000 in 1936 and $100,000 in 1937, under the contracts heretofore referred to, its net income in 1936 would have been approximately $92,000 and its deficit in 1937 approximately $6,000, or an average net income for each of the two years of $43,000. A portion of the payments by complainant to Seatrain, however, was on carload traffic to and from points on complainant's line, on which Seatrain paid complainant's rates of 1 per ton in 1936 and the first 2 months of 1937, and $16 per car on non-lighterage-free freight and $16 per car plus 75 cents per ton on lighterage-free freight during the last 10 months of 1937. While the record does not show the [fol. 50] amount of such tonnage or how much of such tonnage during the last 10 months of 1937 moved on lighterage-free rates, it does indicate that the payments by complainant to Seatrain on this traffic aggregated about $40,000 a year. Accordingly, if the income account as adjusted by complainant were further adjusted to the basis of the divisions actually received from defendants and similar charges on traffic interchanged with Seatrain alone, with the payments by complainant to Seatrain eliminated, an average yearly net income of about $3,000 for 1936 and 1937 is indicated.

Prior to March 1, 1937, complainant's charge on Seatrain's local carload traffic was $1 per ton and subsequent to that date $16 per car on non-lighterage-free and $16 per car plus 75 cents per ton on lighterage-free traffic, and, as heretofore indicated, complainant repaid to Seatrain 40 cents per ton prior to March 1, 1937, and 73 cents per ton subsequent to that date on lighterage-free traffic. If complainant's net charge on this traffic during the last 10 months of 1937 had been 60 cents per ton, the same as its division on Seatrain's carload traffic interchanged with defendants and for a comparable service, its income would have been increased approximately $3,000.

Seatrain's so-called lighterage traffic is not interchanged with complainant but is handled by complainant between the car cradle and Seatrain's pier, a maximum distance of about 400 feet, as Seatrain's agent. Prior to March 1, 1937, complainant charged Seatrain 40 cents per ton for this movement but since that date has charged $2.50 per car. Complainant's service under these charges includes the necessary handling of empty cars to or from the pier as well as the loaded-car movement. Complainant shows that during the last 10 months of 1937 its total charge to Seatrain for this service was $1,196.99, which indicates that such movement consisted of 478 carloads and that the average charge on the basis of 40 cents per ton would have been $14.55 per car. The reduction in the charge from 40 cents per ton, which Seatrain had paid for about four and one-half years, to $2.50 per car was not based on any cost study but was [fol. 51] made as a part of the general changes in contractual relations between complainant and Seatrain at that time. While it is not intended to find on this record that 40 cents per ton is a reasonable charge for this service, it is believed that in comparison with complainant's other charges and divisions it is more appropriate than the existing charge of $2.50 per car. If complainant's income account for 1937 were further adjusted to reflect a net charge of 60 cents per ton on Seatrain's local carload traffic and a charge of 40 cents per ton on Seatrain's lighterage traffic, its income would be increased approximately $9,000, and its average yearly net income for 1936 and 1937 would have been about $7,500. If to this were added the average fixed charges for rent of load and interest on debt in 1936 and 1937, approximately $57,000, the total would have been equivalent to 4

per cent return on the value of the property owned or used and devoted by complainant to common-carrier purposes as of December 31, 1937.

Complainant received no emergency charges on traffic moving in 1937 but received $13,083.68 on traffic moving in 1936. The increases in rates and charges permitted in Ex Parte No. 123 became effective in March and April, 1938, and complainant's divisions are now 63 and 66 cents. Defendants show that complainant's divisions on the 2,961 carloads of Seatrain traffic interchanged with complainant during the six alternate months of 1936 and 1937 totaled $50,643 and if computed at 63 and 66 cents would have totaled $55,271.79, an increase of approximately $9,000 per year. If complainant's divisions and charges on all other traffic were increased but 5 per cent, such an increase would be approximately $11,000 a year. It is thus indicated that, on the basis of complainant's 1937 traffic, the increases in Ex Parte No. 123 would produce revenue of approximately $20,000 a year, an increase of approximately $13,500 a year over the average revenues received from emergency charges in 1936 and 1937.

As contrasted with complainant's income accounts for 1936 and 1937 as adjusted by it and as further adjusted, [fol. 52] the net railway operating income for 10 New York Harbor railroads [4] show at a rate of return on investment in railway property used in transportation ranging from nothing to 3.23 per cent in 1936 and from nothing to 2.72 per cent in 1937, and for the 10 roads as a whole 2.67 per cent in 1936 and 2.21 per cent in 1937. Four of the ten roads, namely, the Erie, the New Jersey & New York, the New York, Ontario & Western, and the New York, Susquehenna & Western, are in bankruptcy.

Complainant contends that defendant's earnings will not be inequitable or unduly low if they pay complainant a division of $1.35 on lighterage-free freight and shows that on such freight to and from other steamship lines defendants pay complainant a division of $1.35; that on traffic to and from so-called contract terminals in Brooklyn, N. Y., de-

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[4] Baltimore & Ohio; Central Railroad of New Jersey; Delaware, Lackawanna & Western; Erie; Lehigh Valley; New Jersey & New York; New York Central; New York, Ontario & Western; New York, Susquehanna & Western; and Pennsylvania.

fendants pay from 5.3 to 8 cents per 100 pounds; and that the costs of some of the lighterage movements in New York Harbor, including movement to and from piers served by complainant, were greater than $1.35 per ton in 1933 and 1934. None of the services for which these payments are made or costs incurred is comparable to the service performed by complainant on the traffic here considered.

Complainant also shows that during the months of March and September it interchanged with defendants 1,102 carloads of Seatrain traffic and that the average loading of these cars was 30.9 tons, the average rail haul 258 miles, and the average revenue $120.86 per car. Complainant's revenue on such traffic at 60 cents per ton was $18.54 per car and 15 per cent of the total revenue. On the basis of a division of $1.35 it would have been $40.72 per car, leaving slightly less than two-thirds of the total revenue to defendants for their 258-mile haul and terminal service at origin.

As previously stated, some of the cars interchanged by complainant with Seatrain and defendants are unloaded [fol. 53] and reloaded on complainant's line. From 5 to 10 per cent of the traffic is so handled. Complainant shows that of 523 carloads so handled in 1937, stated to be a typical but incomplete list, 59 cars containing tomatoes and 169 cars containing pineapples from Cuba were partially unloaded for weighing and sampling by the United States Customs and for inspection by the Federal Horticultural Board; 10 per cent of the lading in 36 cars of refined sugar from Cuba was unloaded for weighing and sampling by the United States Customs; 12 cars of raw sugar and 1 of candy from Cuba were unloaded for weighing and sampling by the United States Customs; 50 cars of sisal from Cuba were unloaded for weighing by public weighers on instructions from the shippers; 180 cars of refined sugar from Cuba were unloaded and reloaded in different lots upon orders from the consignee brokers; 6 cars of flour to Cuba were unloaded and reloaded on shipper's instructions; the lading in 7 private cars was transferred to other cars and forwarded to Cuba because of the amount of compensation demanded for the use of the private cars; 1 car containing steel for Cuba exceeded Seatrain's clearance limits and the lading was transferred to another car; and 2 carloads of steel to Cuba were apparently consolidated with other carloads.

It thus appears that partial or total unloading of certain commodities from Cuba is made necessary by United States

Government regulations, but that the unloading and reloading of the other traffic mentioned was for the convenience of the consignees or for the convenience or disability of Seatrain. While it is the duty of the railroads under their tariffs to load and unload freight moving at lighterage-free rates where such loading or unloading is necessary to the accomplishment of the through transportation, it is not shown that there is any duty on their part under their tariffs to load or unload such freight without additional compensation when such loading or unloading is for reasons such as indicated above.

General Discussion and Conclusions

[fol. 54] Complainant's contentions that the divisions it receives of the lighterage-free rates are unjust, unreasonably low, inequitable, and unduly prejudicial to it, and, conversely, that the divisions received by defendant rail lines out of such rates are unjust, unreasonably high, and unduly preferential of them rest on grounds which may be summarized as follows:

1. In a case involving the division of rates between trunk-line railroads, on the one hand, and a short-line connection, on the other, where the level of the rates to be divided is in the control of the trunk lines, complainant contends that the short-line railroad may fairly claim that, if its operations are shown to be efficiently conducted and in the public interest, it is entitled out of such joint rates to divisions which will at least cover the full cost of performing its portions of the through transportation service, unless the trunk lines, for their part, make a showing that the joint rates are on an unremunerative level because of circumstances beyond their control. On the ground that there is here no proof that the joint rates in question are on an unremunerative level because of circumstances beyond the control of defendant rail lines, complainant regards this general principle as controlling in this case.

2. In determining the full costs of the service which it performs in connection with the lighterage-free rates, complainant contends that the payments which it makes under its contract with Seatrain must be included.

3. Complainant defends the inclusion of these payments and their reasonableness by showing that they represent

the minimum saving realized in the transportation service in question from the method of transferring the freight to and from Seatrain, a method which defendant rail lines did not develop and which requires the use of patented devices for which Seatrain pays. It is urged that it is not just [fol. 55] that this saving should accrue to the benefit of the rail lines, which have done nothing to produce it, and that it is reasonable to exact payments of complainant in order that the benefit may accrue to Seatrain.

4. It is further shown that under the present divisional arrangement defendant rail lines are also reaping a benefit equal to the saving. It is complainant's position that their divisions have to this extent been unjustly and inequitably increased and that this situation should be corrected by a corresponding increase in its own divisions to cover its payments to Seatrain.

Taking up these contentions in order, we agree that, in determining the divisions which a short-line railroad should receive out of joint rates with trunk-line connections for switching service, the same principles should be followed as in prescribing a just and reasonable charge for such service. In other words, the full cost of the service, including a fair return, should be the test, unless it is shown that the joint rates are on an unremunerative level for reasons beyond the control of the trunk-line railroads, including the effects of general traffic depressions. A short-line railroad of this character cannot fairly expect to be relieved from the general results of such depression by corresponding increases in its divisions or switching charges.

The service which the railroads hold themselves out to perform under the lighterage-free rates includes the unloading of inbound cars and the placing of the lading within reach of the ship's tackle and a corresponding but reverse service in connection with outbound freight. For purposes of its own, Seatrain prefers to receive and deliver the loaded car. The unloading or loading of the car lading and its delivery or receipt at ship's tackle is therefore unnecessary. The rail lines do all that is required when they place the cars in or take them from the Seatrain cradle. From this point of view the payments which complainant makes to Seatrain cover no part of its transportation service under the lighterage-free rates and are in addition to the full costs of that service.

[fol. 56] While, therefore, the payments are not made for any service which the rail lines perform under the lighterage-free rates, there is a remaining question whether such payments may be justified, in any way and to any extent, as compensation properly payable to Seatrain for the savings which it has accomplished for the rail lines by its new method of transfer. The new method of transfer puts the connecting rail lines to less expense under the lighterage-free rates than the old method. It may be argued, therefore, that they would be justified in making any payments that might be necessary for the purpose of inducing the establishment of the new method of transfer, provided they were left with a net saving. There is here no evidence, however, that payments were or are necessary for this purpose. The contract between Seatrain and complainant, to which defendant rail lines are not parties, is not evidence to this effect, in view of the control which Seatrain exercises over complainant. No such payments have, so far as the record shows, been exacted or obtained by Seatrain from an independent rail connection. There is ample reason to conclude, also, that the improved method of transfer is only an incident to the Seatrain plan of transportation, and that this plan has sufficient advantages to impel its use and promotion by Seatrain regardless of any contributory payments from rail connections.

It is true, as complainant points out, that if the payments which it now makes to Seatrain are not borne by defendant rail lines through a decrease in their divisions and a corresponding increase of complainant's divisions, they will receive an unearned benefit. This comes about from the fact that this new method makes it unnecessary for the rail lines to perform all the service which they hold themselves out to perform under the lighterage-free rates. Those rates, however, are based on average conditions, and a similar unearned benefit would accrue if a steamship company now docking on the Manhattan waterfront and served by lighter should shift to a deck with direct rail connections on the Jersey shore. It would hardly be sug- [fol. 57] gested that in such an event the defendant rail lines should compensate the steamship company for the change.

Summarizing this discussion, we agree that complainant is entitled to divisions out of the joint rates in question

which are based upon the full costs of performing its portions of the through transportation service, including a fair return, but subject to the qualifications above indicated. We do not agree, however, that the payments which complainant makes under its contract with Seatrain can properly be regarded, upon the evidence presented, as a necessary part of the costs of this service; and, if these payments are not included, the conclusion is warranted by the record that complainant is adequately compensated by its existing divisions. While the result has been to increase the divisions received by defendant rail lines under the lighterage-free rates without change in the service which they perform, this is because some of the service heretofore performed under the lighterage-free rates has become unnecessary.

We find, therefore, that complainant's divisions here in issue are not unjust, unreasonably low, inequitable, or unduly prejudicial to complainant and that the corresponding divisions received by the defendant rail lines are not unjust, unreasonably high, inequitable, or unduly preferential of them. The complaint will be dismissed.

Commissioners MAHAFFIE and CASKIE concur in the result.

SPLAWN, Commissioner, dissenting:

The majority find that the rail lines do all that is required when they place the cars in or take them from the Seatrain cradle and go on to state that "the payments which complainant makes to Seatrain cover no part of its *transportation service* under the lighterage-free rate." [Emphasis supplied.]

I take it that the thought here is that such payments cannot be identified as an element of the cost of performing complainant's service. With this I cannot agree. [fol. 58] The facilities employed in the handling of traffic which complainant interchanges between Seatrain and defendants and necessary to the performance of that *transportation service* are available for that purpose only because of Seatrain's exclusive property right in the patented method of handling the traffic. The service performed by that method not only relieves the rail carriers of loading and unloading expense but affords other advantages to them as well as Seatrain, as is evidenced by

the large volume of traffic interchanged by this means. It admittedly is a service of substantial value to defendants, and the method which complainant uses to effect the interchange is likewise of value to it. It is inconceivable that such values can be created without effort and some element of expense. For such effort and expense Seatrain is entitled to appropriate compensation. This the majority refuse to recognize and in effect divert to defendants the economies achieved by Seatrain, thus indirectly depriving the latter of its property.

[fol. 59] EXHIBIT "C" TO PETITION

Agreement made the 21st day of November, 1932, between Hoboken Manufacturers Railroad Company, a corporation organized and existing under and pursuant to the laws of the State of New Jersey (hereinafter referred to as Railroad), and Seatrain Lines, Inc., a corporation organized and existing under and pursuant to the laws of the State of Delaware (hereinafter referred to as Seatrain).

Witnesseth:

Whereas, Seatrain is the owner of cargo vessels and has leased from Railroad a berth and slip at Hoboken for the docking of said vessels, together with the crane located at said berth; and

Whereas, under the tariffs of Railroad and its connections it is generally the obligation of Railroad with respect to freight consigned to Hoboken for forwarding by vessels docking there to unload said freight from cars and deliver freight to the vessel on its pier alongside and within reach of ship's sling; and

Whereas, with respect to freight arriving at Hoboken by vessel to be forwarded via Railroad it is ordinarily the duty of Railroad under its tariffs and those of its connections to receive said freight from the ship at a pier alongside and to load said freight into cars; and

Whereas, with respect to freight to be forwarded by or received from the vessels of Seatrain, Seatrain may desire that said freight instead of being unloaded from cars shall be loaded upon Seatrain's vessels or delivered from Seatrain's vessels in cars, which operation while avoiding the

unloading or loading of cars will involve other work in lieu of loading or unloading of cars, such as additional handling of the cars after they are placed or received alongside of Seatrain's vessels; and

[fol. 60] Whereas, with respect to freight delivered to or received from steamships involving loading and unloading of cars, Railroad customarily employs the vessel or the owner of the vessel or the vessel's stevedores to perform the work of making suitable interchange between rail and vessel and with respect to Seatrain is willing in lieu of such work to employ Seatrain to do the necessary work of making a suitable interchange between the Railroad and Seatrain vessels;

Now, Therefore, in order that the duties and obligations of the parties hereto may be clearly defined and in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

1. With respect to freight transported by Railroad and consigned to or for delivery to Seatrain when to be delivered, in cars, delivery shall be considered to have been accomplished by Railroad when the cars have been placed upon a cradle of the car elevator on the pier alongside Seatrain's vessel (the elevator being the equivalent of ship's tackle). In view of the fact, however, that it is important for Seatrain that cars be placed on the car elevator in a certain order and at certain times and such placement cannot be handled conveniently by Railroad, Railroad, will, upon Seatrain's request, instead of placing cars directly upon the car elevator place the cars at some convenient point adjacent thereto and Seatrain will for Railroad's account place the cars on the cradle of the car elevator and perform such handling of the cars as may be necessary for this purpose, as well as perform the various other operations which are required in lieu of loading or unloading the cars.

2. With respect to freight discharged from Seatrain's vessels at Hoboken loaded in cars and to be transported by Railroad, Railroad will receive said cars and the obligation of Railroad with respect thereto will commence when the cars are removed from the cradle on the pier alongside Seatrain's vessels. Since, however, it may not be convenient for Railroad to have a locomotive at hand at all times to

[fol. 61] remove said cars from the car elevator and perform other services which are required, Seatrain, will perform this operation for Railroad's account and will perform the necessary handling of the cars to remove them from the elevator and place them on a convenient track in the vicinity thereof.

3. For the services described in the foregoing paragraphs 1 and 2 hereof to be performed by Seatrain for Railroad's account, Railroad will pay Seatrain 40 cents per ton of 2,000 pounds or 2,240 pounds as rated for each ton of freight other than coal loaded into or discharged from Seatrain's vessels in cars and 27 cents per ton for each ton of coal so loaded or discharged.

4. With respect to freight transported by Railroad and consigned to or for delivery to Seatrain when not to be loaded on board ship in the cars in which received by Railroad, delivery shall be considered to be accomplished by Railroad when cars containing the freight have been placed on a track alongside Seatrain's vessel within reach of ship's tackle or when placed at any other point in the vicinity of the ship designated by Seatrain for its convenience.

5. With respect to freight discharged from Seatrain's vessels at Hoboken not loaded in cars and which Railroad is obligated to load in cars, Railroad will receive said freight upon its pier alongside Seatrain's vessel.

6. If with respect to freight handled as described in foregoing paragraphs 4 and 5 hereof, Railroad shall desire Seatrain for its account to perform the labor of loading or unloading cars where such obligation devolves upon Railroad under its tariffs, Seatrain will perform this service and Railroad will pay Seatrain therefor 75 cents per ton of 2,000 pounds or 2,240 pounds as rated of freight so handled by it for Railroad's account.

7. This contract shall be deemed to relate only to the physical handling of any freight that may be delivered to [fol. 62] or received from Seatrain by Railroad but shall not be construed as imposing an obligation on either party to handle, receive or deliver all freight or any particular shipment, or to constitute an arrangement between the parties as to all or any particular freight for the through or continuous transportation thereof, or to prevent the parties

from contracting with shippers for their respective transportation services either under separate and independent contracts or under contracts for through shipment, as they may in each instance elect.

8. This contract shall be retroactive to October 1, 1932 and shall determine the settlement between the parties with respect to all freight handled by them since that date.

9. This contract shall remain in effect during the period of the lease from Railroad to Seatrain of the slips, trestle and car elevator referred to herein or any renewal of said lease, except that this contract may be cancelled upon thirty (30) days' notice in writing given by either party.

10. This contract shall be binding upon the successors and assigns of the parties hereto.

In Witness Whereof, the parties hereto have caused this contract to be executed by their duly authorized officers upon the day and year first above named.

Hoboken Manufacturers Railroad Company, By George S. Amory. Seatrain Lines, Inc., By Joseph Hodgson.

[fol. 63] APPENDIX "D" TO PETITION

Agreement made this 24th day of February 1937, between Hoboken Manufacturers' Railroad Company, a corporation organized and existing under and pursuant to the laws of the State of New Jersey, hereinafter referred to as "Railroad", and Seatrain Lines, Inc., a corporation organized and existing under and pursuant to the laws of the State of Delaware, hereinafter referred to as "Steamship";

Witnesseth:

Whereas, Railroad operates a line of railroad along the waterfront of Hoboken, New Jersey, connecting with the line of Erie Railroad at Weehawken and serving various industries, team tracks and steamship piers, including the pier used by Steamship; and

Whereas, Steamship has for some time past performed, as Agent for Railroad, certain work and services in connection with the delivery and receipt of freight to and from its vessels berthing at a pier served by Railroad; and

Whereas, pursuant to the provisions of various tariffs published and filed with the Interstate Commerce Commission either by Railroad individually or by or on behalf of Railroad's trunk line connection and participated in by Railroad, it is Railroad's obligation and undertaking with respect to certain freight generally described as import, export, coastwise, intercoastal or lighterage free freight delivered to and received from vessels of steamship lines at New York harbor, including the vessels of Steamship, to perform certain services, in the nature of terminal services as distinguished from Railroad's switching services, and to do so without additional charge at the rates provided in such tariffs, such rates including compensation to Railroad or to Railroad and its trunk line connections for its obliga-
[fol. 64] tion and undertaking in the performance of such terminal services, which terminal services include the holding of freight for the free time beyond as specified in such tariffs, loading such freight into or on railroad cars and unloading such freight from railroad cars and, in connection with such loading, stowing and bracing the freight as necessary and moving the freight in cars or otherwise between Railroad's line and the stringpieces or platforms of the vessel's berths, all such service to be performed in such a way as to make delivery thereof to such vessels in the order and at the times called for by the steamship line and to receive such freight as and when discharged from such vessels at such points; and

Whereas, with respect to such freight, and such freight only, transported by Railroad at such rates and delivered to or received from Steamship, Steamship, if advised by Railroad that such freight is to be handled, is ready and willing, but only on the terms hereinafter stated, to perform such terminal services as agent of Railroad to the extent, in the manner and on the terms and conditions hereinafter provided.

Now, Therefore, it is mutually agreed by and between the parties hereto as follows:

1. With respect to such freight transported by railroad at such rates to be delivered to vessels of Steamship, Railroad after holding the freight in accordance with its tariffs and when ordered to make delivery thereof to vessels of Steamship will place cars containing such freight in the order and at the time requested at such point or points

nearest the stringpiece or platform of Steamship's pier or elsewhere as may from time to time be mutually agreed upon and when so placed freight in such cars will as between railroad and steamship be at the risk and responsibility of Steamship, but only to the extent provided in paragraph 6 hereof. Steamship will thereafter promptly perform [fol. 65] any and all services or operations to complete Railroad's obligations under its tariffs to deliver such freight to Steamship's vessels, including any and all obligations of Railroad under its tariffs to the Shipper, consignee or owner of such freight with respect thereto, combining at Steamship's election such services or operations with any operations of loading such freight into vessels of Steamship.

2. With respect to such freight to be received by Railroad from Steamship and to be transported by Railroad at such rates, when Railroad is notified by Steamship that cars containing such freight are loaded at the same point or points as defined or agreed upon in paragraph 1 hereof, such freight in such cars will as between Railroad and Steamship be at the risk and responsibility of Railroad. Steamship will promptly perform any and all services or operations to complete Railroad's obligations under its tariffs to receive such freight from the vessels of Steamship, including any and all obligations of Railroad to the shipper, consignee or owner of such freight with respect thereto prior to the placement of the cars containing such freight at such point or points; including loading the freight into cars, bracing and blocking the freight to prevent movement and damage in transit, using steel banding or blocking where necessary and lining cars to protect the freight, combining at Steamship's election such services or operations with any operations of discharging such freight from vessels of Steamship.

3. Railroad will, when, as and if required, promptly place empty cars at the designated points as provided in paragraph 1 hereof and will accept empty cars released by Steamship at such points when, as and if released to it by Steamship.

4. Steamship will at its expense do any and all checking incident to making delivery and taking receipt of such freight from Steamship.

[fol. 66] 5. Steamship will at its expense recooper any such freight where this is necessary due to damage caused by it, its agents or contractors.

6. Steamship will indemnify and save harmless Railroad from any and all claims for loss, damage or injury of or to such freight, to loaded or empty cars, to persons and to property due to Steamship's negligence or that of its employees, agents or contractors in the performance by Steamship of any obligation or undertaking of Railroad in connection with such freight. Steamship shall furnish railroad with a certificate or certificates or other evidence satisfactory to Railroad showing that Steamship has duly complied with all legal requirements in respect of Federal and State Workmen's Compensation Laws.

7. Steamship will furnish at its expense any and all labor, including overtime if for Steamship's convenience, any and all supplies and materials except as may be provided otherwise herein, and any and all equipment of whatever nature, including gear, tractors, trailers, cranes, hoists, booms, winches or any other equipment necessary to perform any and all services or operations devolving upon it under this agreement, and will assume all costs of any special designs, arrangements or equipment of piers, terminals or vessels or any patented device used by it or others in performing any part of or all of said services or operations.

8. Steamship will at its expense supply all materials required for bracing, blocking and banding such freight and for lining cars containing such freight.

9. For the aforesaid undertakings and for the performance of the services aforesaid Railroad will pay Steamship seventy-three cents (73¢) per ton of 2,000 pounds upon each and every ton of such freight interchanged between Railroad and Steamship and transported or to be transported by Railroad under rates which include compensation to [fol. 67] Railroad and/or its connections for loading such freight on or unloading such freight from railroad cars and Railroad will pay Steamship for actual overtime incurred by Steamship at Railroad's request. If there should be any increase or decrease in the scale of longshoremen's wages from those in effect on February 1, 1937, the percentage of increase or decrease shall be added to the percentage of

labor costs making up the rate of 73¢ per ton and for over time the overtime rates of the new wage scale shall apply.

10. This agreement shall become effective on and after March 1, 1937, and shall remain in effect for a period of three years thereafter, subject, however, to the right of either party on thirty days' notice in writing to the other to cancel the same.

11. This agreement shall be binding on the successors and assigns of the parties hereto but shall not be assigned by either party without the consent of the other.

In Witness Whereof the parties hereto have caused this contract to be executed by their duly authorized officers upon the day and year first above named.

Hoboken Manufacturers' Railroad Company, by George S. Amory, its Vice-President. Seatrain Lines, Inc., by Joseph Hodgson, its Vice-President.

[fol. 68] In the District Court of the United States for the District of New Jersey

[Title omitted]

Intervention of Interstate Commerce Commission—Filed October 18, 1940

In Accordance with the provisions of Sections 212 and 213 of the Judicial Code, (U. S. Code, Title 28, Sec. 45a) the Interstate Commerce Commission hereby enters its appearance as a party defendant, and of ourselves as its counsel, in the above-entitled case.

Interstate Commerce Commission, by E. M. Reidy, Assistant Chief Counsel; D. H. Kunkel, Principal Attorney.

Daniel W. Knowlton, Chief Counsel, Of Counsel.

[fol. 69] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA—Filed November 18, 1940

The defendant, United States of America:

1. Admits the allegations of paragraphs I, II, III and IV, except it denies, as alleged in paragraph II, that this action is brought under the general equity jurisdiction of the Court.

2. Denies the allegations of paragraphs XVII and XVIII. Answering paragraph XV of the complaint, the United States admits that at the hearing before the Commission its examiner excluded certain evidence offered by plaintiff but denies the remaining allegations of the paragraph, and denies that such excluded evidence was material or relevant.

3. Admits the allegations of paragraphs V and VI which correspond to the description of the proceedings before the Interstate Commerce Commission contained in the Commission's report and order of July 24, 1939, copy of which is attached as Exhibit B to the complaint; and denies those which are inconsistent therewith. Denies the allegations of paragraph VII, except that it admits that the plaintiff's petition for reconsideration was denied by order dated April 1, 1940.

[fols. 70-74] 4. Admits those allegations of all other paragraphs of the complaint which correspond to the findings of the Commission contained in its aforesaid report and order or to the evidence of record before the Commission; denies those which are inconsistent therewith; and is without knowledge or information sufficient to form a belief as to the truth of all the remaining allegations not herein admitted or denied.

Frank Coleman, Special Assistant to the Attorney General, Department of Justice, Washington, D. C., Counsel for the United States.

Thurman Arnold, Assistant Attorney General; William F. Smith, ESQ., United States Attorney.

I certify that a true copy of the foregoing Answer of the United States of America was this day mailed to the following persons:

Parker McCollester, Esq., 25 Broadway, New York, New York, Counsel for Plaintiff; Collins & Corbin, Attorneys at Law, 1 Exchange Place, Jersey City, New Jersey, Counsel for Baltimore and Ohio Railroad Company, et al., Intervenors; E. M. Reidy, Esq., Interstate Commerce Commission, Counsel for Interstate Commerce Commission.

Frank Coleman, Special Assistant to the Attorney General, Department of Justice, Washington, D. C., Counsel for the United States.

November 15, 1940.

[fol. 72] In the District Court of the United States for the District of New Jersey

[Title omitted]

Answer of Interstate Commerce Commission—Filed October 18, 1940

The Interstate Commerce Commission, hereinafter called the Commission, intervening defendant in the above-entitled case, for its answer to the petition herein, answers and says:

I

Answering the allegations of paragraphs I, II, III and IV of the petition, the Commission for the purposes of this suit admits the facts therein contained, except it denies, as alleged in paragraph II, that this suit is brought under the general equity jurisdiction of the Court.

II

Answering paragraph V of the petition, the Commission admits that the proceedings arose in the manner described [fol. 73] in said paragraph, but for more full and complete information concerning the allegations of the complaint filed with the Commission and out of which the order arose, the Commission respectfully refers the Court to said complaint, attached to and made a part of the petition herein as Exhibit A.

III

Answering the allegations of paragraph VI of the petition, the Commission admits the allegations therein contained, including the issuance by it of its report of July 24, 1939, attached to and made a part of the petition as Exhibit B. The Commission also alleges that on the same date it issued an order in this case (Docket No. 27630, *Hoboken Manufacturers' Railroad Company* v. *Akron, Canton & Youngstown Ry. Co.*) not shown in the petition herein, the body of which reads:

> "This proceeding being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and said Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:
>
> *It is ordered*, That the complaint in this proceeding be, and it is hereby, dismissed."

IV

Answering the allegations of paragraph VII of the petition, the Commission admits the issuance by it of the report therein referred to, but denies that it made findings and conclusions which were either erroneous or unlawful in any respect. As to the contents of its order dismissing the complaint, referred to in paragraph VII of the petition, the Commission respectfully refers the Court to the terms of [fol. 74] said order, the body of which has been set forth in the prior paragraph.

Answering further the allegations of paragraph VII, the Commission denies that plaintiff, and its trunk-line rail connections were and are left with no basis of divisions of the joint through rates for the transportation of freight interchanged between them and delivered by plaintiff to or received by it from the vessels of Seatrain.

Answering further the allegations of paragraph VII, the Commission admits that on or about January 12, 1940, plaintiff filed with it a petition for rehearing and that said petition was denied by the Commission on April 1, 1940.

V

Answering the allegations of paragraph VIII of the petition, the Commission, for the purpose of this suit, admits the allegations therein contained.

VI

Answering the allegations of paragraph IX of the petition, the Commission denies that this paragraph constitutes a full, complete or accurate statement of what the evidence before the Commission showed.

VII

Answering the allegations of paragraph X of the petition, the Commission denies that the allegations therein contained constitute a full, complete or accurate statement of what the evidence introduced before the Commission showed.

[fol. 75]

VIII

Answering the allegations of paragraph XI of the petition, the Commission respectfully refers the Court to Exhibit A, attached to and made a part of the petition, for more full and complete information concerning the allegations of the complaint referred to in said paragraph XI.

Further answering the allegations of paragraph XI of the petition, the Commission denies that plaintiff's allegations concerning what the evidence before the Commission showed is a full, complete or accurate statement concerning that evidence.

IX

Answering the allegations of paragraph XII of the petition, the Commission denies that the allegations of this paragraph constitute a full, complete or accurate statement as to what the evidence before the Commission showed. Concerning the terms of the contract of November 21, 1932, and February 27, 1937, the Commission respectfully refers the Court to said contracts, attached to and made a part of the petition as Exhibits C and D, respectively, for more full and complete information in the premises.

X

Answering the allegations of paragraph XIII of the petition, the Commission respectfully refers the Court to its report of July 24, 1939, attached to and made a part of the petition as Exhibit B, for more full and complete information as to its findings and determinations than are contained in said paragraph of the petition.

[fol. 76] Further answering the allegations of paragraph XIII of the petition, the Commission denies that the statements therein contained constitute a full, complete or accurate summary of what the evidence introduced before it showed. The Commission deems it unnecessary to answer the allegations of said paragraph concerning the contentions made by plaintiff before the Commission.

XI

Answering the allegations of paragraph XIV of the petition, the Commission denies that the evidence referred to therein is a full, complete or accurate statement concerning what the evidence before the Commission showed.

XII

Answering the allegations of paragraph XV of the petition, the Commission admits that at the hearing before the Commission, its examiner excluded certain evidence offered by plaintiff. The Commission denies that such excluded evidence was material or relevant to any issues properly before it, and also denies the accuracy of the conclusions set forth in said paragraph concerning the excluded evidence.

XIII

Answering paragraph XVI of the petition, the Commission respectfully refers the Court to its report of July 24, 1939, attached to and made a part of the petition as Exhibit B, for more full and complete information concerning the Commission's findings and determinations than is contained in said paragraph.

[fol. 77] XIV

Answering the allegations of paragraph XVII of the petition, the Commission denies that its report and order of July 14, 1939, is either null or void or unlawful for any reason set forth in said paragraph, or for any other reason or reasons.

XV

Answering further the allegations of the petition, the Commission alleges that said report of July 24, 1939, referred to in paragraph VI of the petition, and its said order of the same date, incorporated in paragraph III of this answer, were made and issued in proceedings pending before it entitled *Hoboken Manufacturers Railroad* v. *The Akron, Canton & Youngstown Ry. Co., et al.*, No. 27630, which was instituted pursuant to complaint filed with the Commission by plaintiff herein for the purpose of determining whether the divisions plaintiff was obtaining out of the traffic involved, were just, fair and reasonable under the Interstate Commerce Act; that in said proceedings the parties thereto, including the plaintiff herein, were, and that each of them was, accorded the full hearings provided for in and by the Interstate Commerce Act; that in said hearings a large volume of testimony and other evidence bearing upon the matters covered in and by said report and order were submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of the plaintiff herein, by counsel of said plaintiff; that at said hearings and subsequently, both orally and in briefs filed in said proceedings, questions relating to [fol. 78] said matters were fully argued and submitted to the Commission for determination on behalf of said plaintiff by its counsel, including many of the questions raised by plaintiff in this action, whereupon the Commission determined said matters and entered and duly served upon the plaintiff herein, and upon other interested parties, its said report and order; that said report and order included the Commission's findings of fact, decision, conclusions, order and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said report, the Commission made the findings and stated the conclusions upon which said report and order are based.

The Commission further alleges that the findings, determinations and conclusions in said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted in said proceedings as aforesaid.

The Commission further alleges that in making said report it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the plaintiff

in said proceedings by their counsel, including many of the matters covered by the allegations of the petition herein.

XVI

The Commission further alleges that said order of July 24, 1939, was not made or entered either arbitrarily or unjustly or erroneously or contrary to the relevant evidence, or without evidence to support it; that in making said report the Commission did not exceed the authority which had been duly conferred upon it, and the Commission denies each of and all the allegations to the contrary contained in the petition.

[fol. 79] Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the petition, in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report and order of July 24, 1939, heretofore referred to.

All of which matters and things the Commission is ready to aver, maintain and prove as this Honorable Court shall direct, and hereby prays that said petition be dismissed.

Interstate Commerce Commission. By E. M. Reidy, Assistant Chief Counsel.

Daniel W. Knowlton, Chief Counsel, of Counsel.

[fol. 80] *Duly sworn to by Joseph B. Eastman. Jurat omitted in printing.*

[fol. 81] In United States District Court

[Title omitted]

Motion of Baltimore and Ohio R. R. Co., et al. for Leave to Intervene as Defendants—Filed Oct. 26, 1940

The Baltimore and Ohio Railroad Company, a corporation of the States of Maryland and Virginia; Shelton Pitney and Walter P. Gardner, Trustees of The Central Railroad Company of New Jersey, in reorganization; The Delaware and Hudson Railroad Corporation, a corporation of the State of New York; The Delaware, Lackawanna and Western Railroad Company, a corporation of the State of Pennsylvania; Robert E. Woodruff and John A. Hadden, Trustees of Erie Railroad Company, in reorganization; Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania; The New York Central Railroad

Company, a corporation of the State of New York; Frederic E. Lyford, Trustee of New York, Ontario and Western Railway, in reorganization; The Pennsylvania Railroad Company, a corporation of the State of Pennsylvania, and Reading Company, a corporation of the State of Pennsylvania, move for leave to intervene as defendants in this action in order to assert the defenses set forth in their proposed answer, of which a copy is hereto attached, on the grounds [fol. 82] that applicants herein, or their predecessors, were parties defendant to a proceeding before the Interstate Commerce Commission known as No. 27630, entitled *Hoboken Manufacturer's Railroad Company* v. *The Akron, Canton & Youngstown Railway Company, et al.*, in which proceeding the Commission made its order of July 24, 1939, the validity of which is here attested. Said order deals with the division as between plaintiff herein, on the one hand, and these applicants on the other, of the freight revenues arising from rates jointly published and maintained by applicants and plaintiff, and the annulment of such order as herein sought by plaintiff, would affect the measure of the proportion of such freight revenues to which these applicants are and would be entitled. The instant action involves the interest of these applicants as such parties defendant in said proceeding before the Interstate Commerce Commission and their interest in the said freight revenues, and, as such parties defendant therein and as participants in such joint rates, applicants have a defense to plaintiff's claim presenting both questions of law and fact which are common to the main action. Applicants have an interest in the subject matter of this action which will be affected by any order the court may enter herein.

This motion is made to intervene as of right under the provisions of the Act approved June 18, 1910, c. 309, Sec. 5, 36 Stat. 543; the Act approved March 3, 1911, c. 231, Sec. 212, 36 Stat. 1150; and the Act approved October 22, 1913, [fol. 83] c. 32, 38 Stat. 220. (28 U. S. C. A. Sec. 45a).

Signed: Collins & Corbin, Attorneys of Record for The Baltimore and Ohio Railroad Company, et al., Applicants for leave to Intervene. By: Charles W. Broadhurst, a Member of said firm and one of the attorneys of record doing business under said firm name. Address: 1 Exchange Place, Jersey City, N. J.

NOTICE OF MOTION

To: John Drewen, Esq., 921 Bergen Avenue, Jersey City, N. J. Resident Counsel for Plaintiff, designated under Rule 3.

Please Take Notice that the undersigned will bring the above motion on for hearing before this Court, at the United States Courts and Post Office Building, Newark, New Jersey, on the 4th day of November, 1940, at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

Signed: Collins & Corbin, Attorneys of Record for The Baltimore and Ohio Railroad Company, et al., Applicants for leave to Intervene. By: Charles W. Broadhurst, a Member of said firm and one of the attorneys of record doing business under said firm name. Address: 1 Exchange Place, Jersey City, N. J.

[fol. 84] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING LEAVE TO THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL., TO INTERVENE—Filed November 12, 1940

This cause coming on to be heard on the 4th day of November, 1940, on motion of The Baltimore and Ohio Railroad Company and other applicants to intervene in the above entitled action and to be made parties defendant thereto, and it appearing that the said applicants were parties in interest to the proceeding before the Interstate Commerce Commission, in which was made the order, the validity of which is attacked in this action, and that this action involves the interest of applicants, and that said applicants have an interest in the above described action sufficient to warrant them becoming parties;

It is therefore, on this 12th day of November, 1940, Ordered that The Baltimore and Ohio Railroad Company, a corporation of the States of Maryland and Virginia; Shelton Pitney and Walter P. Gardner, Trustees of The Central Railroad Company of New Jersey, in reorganization; The Delaware and Hudson Railroad Corporation, a corporation

of the State of New York; The Delaware, Lackawanna and [fol. 85] Western Railroad Company, a corporation of the State of Pennsylvania; Robert E. Woodruff and John A. Hadden, Trustees of Erie Railroad Company, in reorganization; Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania; The New York Central Railroad Company, a corporation of the State of New York; Frederic E. Lyford, Trustee of New York, Ontario and Western Railway, in reorganization, The Pennsylvania Railroad Company, a corporation of the State of Pennsylvania, and Reading Company, a corporation of the State of Pennsylvania, be, and they are hereby granted leave to intervene in said suit as parties defendant thereto.

Guy L. Fake, Judge.

Rule actually entered this day of November, 1940, On Motion of Collins & Corbin, Attorneys of Record for The Baltimore and Ohio Railroad Company, et al., Applicants for leave to Intervene, by Charles W. Broadhurst, A member of said firm and one of the attorneys of record doing business under said firm name. 1 Exchange Place, Jersey City, N. J.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 86] In United States District Court

[Title omitted]

Answer of the Baltimore and Ohio Railroad Company, et al., Interveners—Filed November 14, 1940

The Baltimore and Ohio Railroad Company, a corporation of the States of Maryland and Virginia; Shelton Pitney and Walter P. Gardner, Trustees of The Central Railroad Company of New Jersey, in reorganization; The Delaware and Hudson Railroad Corporation, a corporation of the State of New York; The Delaware, Lackawanna and Western Railroad Company, a corporation of the State of Pennsylvania; Robert E. Woodruff and John A. Hadden, Trustees of Erie Railroad Company, in reorganization; Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania; The New York Central Railroad Company,

a corporation of the State of New York; Frederic E. Lyford, Trustee of New York, Ontario and Western Railway, in reorganization; The Pennsylvania Railroad Company, a corporation of the State of Pennsylvania, and Reading Company, a corporation of the State of Pennsylvania, defendants intervening in the above entitled cause by leave of court, for answer to the petition filed by the plaintiff herein, say that:

[fol. 87] I. These defendants admit, for the purposes of this action, the allegations contained in Paragraphs I, II, III, and IV of the petition.

II. For answer to Paragraph V of the petition, these defendants admit the allegations contained in the first sentence thereof, but as to the remaining allegations thereof ask leave to refer to plaintiff's petition or complaint before the Interstate Commerce Commission, annexed as Exhibit A to its petition herein, for a fuller and more accurate statement of its contents.

III. These defendants admit the allegations of Paragraph VI of the petition except that they deny that Exhibit B attached to plaintiff's petition includes the Commission's order of July 24, 1939, which accompanied its report of the same date. A copy of said order is attached hereto as Exhibit I.

IV. Answering Paragraph VII of the petition, these defendants admit that the Interstate Commerce Commission by its order of July 24, 1939, attached hereto as Exhibit I, dismissed the complaint of plaintiff in the Commission's Docket No. 27630, and admit that by its order of April 1, 1940, in the said docket, the Commission denied plaintiff's petition of January 12, 1940, for reconsideration and reargument. To the extent that the remaining allegations require answer, these defendants deny them, including the allegations that the Commission failed to comply with the law in dismissing the said complaint in its Docket No. 27630.

V. For answer to Paragraphs VIII, IX, and X of the petition, these defendants deny that the allegations are [fol. 88] a full, complete, or accurate statement of the evidence before the Commission on the subject matter of the allegations.

VI. For answer to so much of the allegations of Paragraph XI of the petition as refers to allegations contained

in plaintiff's complaint before the Interstate Commerce Commission, these defendants refer to that complaint, as set forth in Exhibit A attached to the petition herein, for a full and accurate statement of its contents. Further answering, these defendants deny that the allegations are a full, complete, or accurate statement of the evidence before the Commission in respect of the subject matter of said allegations, except that these defendants admit the filing of plaintiff's complaint in the Commission's Docket No. 27630, annexed to petition herein as Exhibit A, on or about December 30, 1936.

VII. Answering Paragraph XII of the petition, these defendants admit that copies of the contracts appended to the petition herein as Exhibit C and Exhibit D were introduced at the hearing before the Commission's Examiner in its Docket No. 27630, but otherwise these defendants deny that the allegations of this paragraph are a full, complete, or accurate statement of the evidence before the Commission on the subject matter of the allegations.

VIII. For answer to so much of Paragraph XIII of the petition as relates to what the Commission found in its report in its Docket No. 27630, these defendants refer to said report, which is annexed as Exhibit A to plaintiff's petition herein, for a complete and accurate statement of its findings. For answer to such of the allegations of Paragraph XIII as relate to what the evidence before the Com-[fol. 89] mission showed, these defendants deny that the allegations are a full, complete, or accurate statement of the evidence before the Commission on the subject matter thereof.

IX. For answer to the allegations of Paragraph XIV of the petition, these defendants deny that the allegations are a full, complete, or accurate statement of the evidence before the Commission on the subject matter thereof.

X. Answering Paragraph XV of the petition, these defendants admit the allegations of the first two sentences thereof, and deny the remaining allegations. Further answering, these defendants deny that the offered evidence was competent, relevant, or material to any issue properly before the Commission.

XI. For answer to the allegations of Paragraph XVI of the petition, these defendants refer to the Commission's

report, annexed to plaintiff's petition herein as Exhibit A, for a complete and accurate statement of its findings.

XIII. Answering Paragraph XVII of the petition, these defendants deny the allegations thereof.

Wherefore, these defendants pray that the relief prayed for in the petition be denied and that said petition be dismissed with costs against the plaintiff, and that these defendants have such other and further orders, decrees, or [fol. 90] relief as may be just and proper.

(Signed) Collins & Corbin, Attorneys of Record and Resident Counsel designated under Rule 3, for The Baltimore and Ohio Railroad Company, et al., Interveners, by Charles W. Broadhurst, a member of said firm and one of the attorneys of record doing business under said firm name.

Address: 1 Exchange Place, Jersey City, N. J.

Francis R. Cross, Baltimore & Ohio Building, Baltimore, Md. Joseph F. Eshelman, Broad Street Station Building, Philadelphia, Pa. Thomas P. Healy, 466 Lexington Avenue, New York, N. Y. Willis T. Pierson, Midland Bank Building, Cleveland, Ohio. Of Counsel.

[fols. 91-92] EXHIBIT I TO ANSWER OF BALTIMORE & OHIO R. R. CO., et al.

ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 24th day of July A. D. 1939.

No. 27630

HOBOKEN MANUFACTURERS' RAILROAD COMPANY

v.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY, et al.

This proceeding being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and said Commission

having on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the commission.

W. P. Bartel, Secretary. (Seal.)

[fol. 93] CORRESPONDENCE BETWEEN JUDGE AND COUNSEL

UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

Chambers of Judge Fake

Newark, N. J., December 23, 1941.

Joseph F. Eshelman, Esq. Parker McCollester, Esq. Wilbur La Roe Jr., Esq. Smith R. Brittingham, Esq. E. M. Reidy, Esq. Collins & Corbin, Esqs. Willis T. Pierson, Esq.

Re: Hoboken Manufacturers Railroad Co. v. United States of America and Interstate Commerce Commission

GENTLEMEN:

The judges of the statutory court have considered the briefs and the transcript of the argument in the above entitled case. It is their view that any decision would be premature while the so-called Seatrain Division case (complaint file May 22, 1941) is still pending before the Interstate Commerce Commission. Therefore, I am writing the parties for the purpose of ascertaining the status of that case. Please reply immediately.

Yours very truly, Guy L. Fake.

[fol. 94] EMR-VMW

Interstate Commerce Commission, Office of the Chief Counsel, Washington

December 26, 1941.

Honorable Guy L. Fake, United States District Judge, District of New Jersey, Newark, N. J.

In re: Hoboken Manufacturer's Railroad Co. v. United States and Interstate Commerce Commission, Civil Action No. 1100, U. S. District Court, District of New Jersey

DEAR JUDGE FAKE:

I acknowledge receipt of your favor of December 23d, addressed to all counsel in the above-entitled case, advising that it is the opinion of the court that any decision in this case would be premature because of the pendency before the Interstate Commerce Commission of the so-called Seatrain Divisions Case, and inquiring as to the status of this last-mentioned case.

The Commission's records show, as your letter indicates, that the complaint was filed on May 22, 1941, in the Seatrain Divisions Case, which is Docket No. 28668, *Seatrain Lines, Inc.* v. *Akron, Canton & Youngstown Ry. Co., et al.*; that answers have been filed by the defendants; that the case was originally set for hearing in August, but because of the pendency of another proceeding before the Commission involving somewhat related issues, the hearing was cancelled pending the Commission's determination of the related case; that the related case has now been decided by the Commission (December, 1941), and that the hearing in the Seatrain Divisions Case will be set for some time early in 1942. No hearing has as yet been held.

I trust that this letter gives you the information desired, and if not, I will be glad to supply anything further.

Yours very truly, E. M. Reidy, Assistant Chief Counsel.

cc Messrs. Collins & Corbin, 1 Exchange Place, Jersey, [fol. 95] City, N. J. W. T. Pierson, Esq., General Attorney, Erie Railroad Company, Midland Bldg., Cleveland, Ohio. Joseph F. Eshelman, Esq., General Attorney, Pennsylvania Railroad Company, Philadelphia, Pa. Parker McCollester, Esq., c/o Lord, Day & Lord, 25 Broadway, New York, N. Y.

Wilbur LaRoe, Esq., Attorney At Law, Investment Bldg., Washington, D. C. Smith R. Brittingham, Jr., Esq., Special Assistant to the Attorney General, Department of Justice, Washington, D. C.

[fol. 96] Erie Railroad Company. Legal Department

E-22947

Cleveland, Ohio, January 2, 1942.

Hoboken Manufacturers Railroad Co. vs. United States of America and Interstate Commerce Commission

Honorable Guy L. Fake, United States District Judge, United States Courthouse, Newark, N. J.

Dear Judge Fake:

During my absence from the office, Mr. J. P. Canay acknowledged your letter of December 23, 1941 with regard to the above-entitled case and stated that, upon my return, a further response would be made.

I have received a copy of Mr. Reidy's letter to you under date of December 26, 1941 and agree with his statement of the facts respecting the status of Docket No. 28668, now pending before the Interstate Commerce Commission and involving divisions of rates with Seatrain Lines, Inc.

Yours very truly, W. T. Pierson, Assistant General Counsel.

[fol. 97] Lord, Day & Lord, 25 Broadway, New York

January 10, 1942.

Honorable Guy L. Fake, United States District Judge, United States Court House, Newark, New Jersey

Civil No. 1100. Hoboken Manufacturers Railroad Co. v. United States of America

Dear Judge Fake:

I duly received your letter of December 23rd, addressed to counsel in the above case, advising that it is the view of the judges of the statutory court that any decision would be

premature while the so-called Seatrain Divisions Case is still pending before the Interstate Commerce Commission and asking the parties, therefore, to inform you as to the status of that case. I apologize for my delay in answering your letter. I could have answered it at once if I were to say simply that the Seatrain Divisions Case has not yet been set for hearing by the Commission and that hearing has been deferred awaiting the Commission's decision in another case, called the Agwilines Divisions Case, involving the divisions of the same joint rates between the railroads and the break-bulk steamship lines. This has been done because it was felt that the decision in the Agwilines Case, which has only recently been announced, might afford a starting point for arriving at a basis of settlement of the Seatrain Divisions Case. Such a reply, however, would not [fol. 98] have corrected the apparent misapprehension that the issues in the case pending before the statutory court and those in the Seatrain Divisions Case are identical and that the two cases relate to the same subject matter. To explain why that is not so requires a somewhat more extended reply, which absence from the city and the press of various emergency matters have denied me the opportunity to prepare until now.

For an understanding of the situation, it must be explained, first, that freight which is interchanged between the trunk line railroads and Seatrain Lines falls into two primary categories: (1) freight moving coastwise in interstate commerce between interior Eastern points and points in the South and Southwest, and (2) freight moving in foreign commerce between interior Eastern points and Cuba. About two-thirds of Seatrain's business consists of freight to and from Cuba. Again, the railroad freight rates which are applicable to the transportation of these two categories of freight are of different sorts. (a) There are so-called local (or proportional) freight rates published by the railroads between interior Eastern points and shipside in New York Harbor, including Hoboken. These are the rates necessarily charged on all Cuban freight. They were also charged in the past on all but a very small proportion of the coastwise freight interchanged with Seatrain because, until required to do so by an order of the Commission about a year ago, the railroads have refused to join Seatrain in the publication of unit over-all rates for through transportation between the Eastern points and points in the South

and Southwest. (b) Pursuant to the order of the Commission, referred to, such through unit rates were established [fol. 99] last spring applicable to a considerable part of the coastwise interstate freight interchanged with Seatrain.

The Seatrain Divisions Case, to which you refer, involves a determination of the division between Seatrain and the railroads of only the joint through unit rates established last spring under the Commission's order which are applicable to but a portion of the coastwise freight interchanged with Seatrain and to none of the Cuban traffic. The case before the statutory court, on the other hand, relates to the division between the Hoboken Manufacturers Railroad and the trunk line railroads of the so-called "local (or proportional) rates", applicable to *all Cuban* freight and, until last spring, to *all but a small part of the coastwise* freight interchanged with Seatrain and concerns the justness of compensating Seatrain out of such rates for the use of its devices and for the savings and benefits accruing to the railroads therefrom.

To hold in abeyance the case before the statutory court would mean, therefore, making the decision in the case involving much the greater proportion of the business interchanged with Seatrain await a determination in a case involving a small proportion of the traffic and for the most part different rates.

Moreover, although the question of Seatrain's right to expect reasonable compensation for its facilities, the saving in labor and expense to the railroads and the traffic benefits secured by the railroads is present and is bound to be of importance in the Seatrain Divisions Case, the considerations determining the division of unit rates for through transportation between Seatrain, on the one hand, and the railroads, on the other, may be quite different from [fol. 100] those in the Hoboken Divisions Case involving railroad rates to and from shipside, which by their terms cover and include compensation to the railroads for the labor and expense of furnishing cars, of loading and unloading cars and of handling freight between cars and foot of ship's sling, from which labor and expense the railroads are saved by Seatrain's facilities.

It is, of course, our contention, which we argued to the court, that a party supplying facilities which result in a saving in operations for their connections, especially when these facilities are devices representing ingenuity and en-

terprise as well as substantial investment, is entitled to compensation from those benefited thereby. We contend that it is immaterial whether the particular operations in connection with which the devices themselves are used are to be considered for certain purposes a part of the steamship portion or a part of the rail portion of the transportation so long as the benefits accrue to the railroads by reducing the operations which the railroads would otherwise have to perform and the labor and costs which would otherwise devolve upon them and by providing them with new and profitable business. And we contend that the essential question before the Commission was what was reasonable compensation under the circumstances. We are before the Court because the Commission failed to determine that question and we ask that the matter be sent back to the Commission for such a determination on the ground that Seatrain for its part is entitled to demand some compensation for the employment of its facilities and method of interchange and for the burdens which it assumes in connection therewith, and the railroads, on the other hand, should pay such compensation in consideration of the sav- [fol. 101] ings and benefits which they secure—the amount of the reasonable compensation being an administrative question which it is the function of the Commission to decide.

My clients have suffered greatly from the lengths of time required for final decisions in the various proceedings to which they have been compelled to resort to overcome railroad opposition to their new method of transportation. Even the Seatrain Divisions Case, which you mention, is an example. You refer to it as having been filed on May 22, 1941. As a matter of fact, Seatrain filed with the Commission its complaint asking the Commission to prescribe joint through unit rates for interstate transportation in connection with its services and the railroads in December, 1932, and as a part of that complaint asked the Commission also to determine how the rates so prescribed should be divided between it and the railroads. As I have said, decision in that case was not rendered by the Commission until a year ago, and when it rendered its decision the Commission prescribed only the joint through rates themselves and, despite our request, failed to make a determination as to how these rates should be divided. Therefore, it was necessary for Seatrain to file its new complaint of May 22, 1941, to which you refer as the Seatrain Divisions Case, again asking a

determination of the divisions of the joint through rates for interstate transportation between Seatrain, on the one hand, and the railroads. Hence, although this particular complaint is fairly recent, Seatrain's efforts to secure a determination of the basis of dividing joint rates between it and the railroads have been pursued vigorously by it for nine years.

[fol. 102] If our position is well taken, every day's further delay in the making of a finding by the Commission on the reasonableness of the compensation which should be paid to Seatrain may mean financial injury to my clients, for which their means of redress are by no means clear. The extent of the jurisdiction of either the Commission or the courts to require retroactive readjustment of divisions where rates have not been specifically prescribed by the Commission is a matter as to which the law is in a state of uncertainty. Therefore, so long as the questions of Seatrain's right to expect reasonable compensation, of the trunk lines' obligation to allow divisions to the Hoboken sufficient to pay reasonable compensation, and of the amount of compensation which is reasonable are undetermined, the trunk lines may be unjustly enriched, with no remedy to Seatrain and the Hoboken Manufacturers Railroad on the great bulk of the traffic interchanged. If either case should await the determination of the other, there are not the same objections to the Commission's holding up it decision in the Seatrain Divisions Case, since that case involves the division of rates specifically prescribed by the Commission and there is no doubt of the Commission's authority under the statute to order the basis of their division between Seatrain and the railroads on past as well as future shipments (Interstate Commerce Act, Section 15 (6). If our contentions are not valid, the sooner that is known the sooner some other course may be sought by my clients.

[fol. 103] For these reasons we respectfully urge that the pendency before the Commission of the so-called Seatrain Divisions Case should not cause the statutory court to await the Commission's determination therein before deciding the Hoboken Railroad's case.

Yours respectfully, Parker McCollester.

PMcC/WEL.

c/c Wilbur LaRoe, Jr., Esq., Investment Building, Washington, D. C., Smith R. Brittingham, Jr., Esq., Special Assistant to the Attorney General, Department of Justice,

Washington, D. C., E. M. Reidy, Esq., Assistant Chief Counsel, Interstate Commerce Commission, Washington, D. C., Messrs. Collins & Corbin, 1 Exchange Place, Jersey City, N. J., Willis T. Pierson, Esq., Erie Railroad Company, Midland Building, Cleveland, Ohio, Joseph F. Eshelman, Esq., The Pennsylvania Railroad Company, Philadelphia, Pennsylvania.

[fol. 104] Erie Railroad Company

Legal Department

E-22947

Cleveland, Ohio, January 14, 1942.

Hoboken Manufacturers Railroad Co. vs.
United States of America and Interstate
Commerce Commission——Civil No. 1100

Honorable Guy L. Fake, United States District Judge,
United States Courthouse, Newark, N. J.

Dear Judge Fake:

I am in receipt of copy of letter to you from Mr. Parker McCollester under date of January 10th, in which he goes beyond the necessary requirements of a specific reply to your letter of December 23, 1941 and submits argument bearing upon some of the issues presented in the case.

The intervening railroads have no desire to reargue the case by letter correspondence but, under the circumstances now presented, they feel impelled to make some response to Mr. McCollester's letter in order that the Court may not construe their silence as acquiescence in the argument presented by Mr. McCollester.

Without going into detail with respect to the rate structure, the intervening railroads wish to point out that Mr. McCollester, among other things, fails to mention local or proportional rates which are not lighterage-free. The proceeding before the Commission involved the division, as between Hoboken Manufacturers Railroad Company and the Trunk Line railroads, of all revenues accruing to them jointly for the rail movement between interior Eastern points and alongside Seatrain vessels at Hoboken, whether those revenues accrued from local or proportional rates (either lighterage-free or non-lighterage-free) or from joint

rates involving both rail and Seatrain service. As stated at the top of page 3 of intervening railroads' brief of June 10, 1941, "In other words, the Commission was called upon to consider only the divisions of rates and revenues between the complainant and its rail connections for services performed by them on lighterage-free freight west of the point of delivery at foot of ship's tackle or alongside vessel," and at page 7 of said brief "Hoboken is satisfied with its [fol. 105] present divisions of 63 or 66 cents a ton on carload traffic to and from provate sidings, team tracks, freight house, and on non-lighterage-free freight to or from break-bulk steamships where the expense of loading or unloading is borne by the shipper. Hoboken is also satisfied with the 60-cent division (now 63 or 66 cents) on freight interchanged with Seatrain which moves under non-lighterage-free rates." In this connection, the Court's attention is especially invited to pages 16 and 17 of intervening railroads' brief of June 10, 1941 and pages 4 and 5 of the reply brief dated June 26, 1941.

In the paragraph beginning at the bottom of page 3 and continuing to the top of page 5 of Mr. McCollester's letter, it is asserted that this case arises because the Commission failed to determine what compensation Seatrain was entitled to demand for employing its facilities and method of interchange, etc. Seatrain is not a party to Docket No. 27630 and does not have any right to an adjudication of claims it may have against the Trunk Lines by reason of its own employment of its patented facilities beyond the point at which the Commission has found the rail service ends. The point is that in the instant case Hoboken Manufacturers Railroad seeks increased divisions because of certain patented devices and facilities owned by Seatrain Lines and in Docket No. 28668, now pending before the Commission awaiting hearing, Seatrain Lines seeks to have its own divisions as a water line fixed in consideration of the use of the same patented devices and facilities.

The paragraph beginning at page 4 contains several erroneous theories which are answered at pages 14 to 21, inclusive in interveners' brief and also in the reply brief.

At pages 5 and 6 of Mr. McCollester's letter, reference is made to the length of time during which Seatrain litigation has been pending before the Commission. Any implication to the effect that undue delay has resulted because of

dilatory action by the Trunk-Line Railroads is entirely unwarranted, and if the Court considers the matter of any importance, we respectfully invite inquiry of the Commission as to whether, in its opinion, the time required for consideration and determination of the various questions involved in the litigation is properly chargeable to any lack of good faith or improper conduct on the part of the Trunk-Line carriers. It is interesting to note that the Commission's decision here under attack was rendered on July 24, 1939, and the instant case was not commenced by the plaintiff until the latter part of August 1940.

[fol. 106] I am sending a copy of this letter to those named below.

Yours very truly, W. T. Pierson, Assistant General Counsel.

c.c. Mr. Parker McCollester, Lord, Day & Lord, 25 Broadway, New York, N. Y., Mr. Wilbur LaRoe, Jr., Investment Building, Washington, D. C., Mr. Smith R. Brittingham, Jr., Special Assistant to the Attorney General, Department of Justice, Washington, D. C., Mr. E. M. Reidy, Assistant Chief Counsel, Interstate Commerce Commission, Washington, D. C., Messrs. Collins & Corbin, 1 Exchange Place, Jersey City, N. J., Mr. Joseph F. Eshelman, Assistant General Counsel, The Pennsylvania Railroad Company, Philadelphia, Pa.

[fol. 107] In United States District Court

Minute Entries of Composition of Three Judge Court and of Argument and Submission—April 18, 1942

Present: Hon. John Biggs, Jr., Circuit Court Judge; Hon. Guy L. Fake, U. S. District Judge; Hon. William F. Smith, U. S. District Judge; Charles E. Jaeckel, Deputy Clerk, and Chris V. Gormley, Deputy Marshal

[Title omitted]

Pursuant to Statute, Judge Guy L. Fake called a Statutory Court consisting of John Biggs, Jr., U. S. Circuit Court Judge and Guy L. Fake and William F. Smith, U. S. District Court Judges.

Case called and moved at 11:00 A. M.

Appearances:

Parker McCallester, Esq., and Wilbur La Roe, Jr., Esq., for Hoboken Mfgs. R. R., Plaintiff.

S. R. Brittingham, Jr., Esq., Special Ass't Attorney General, for United States of America, Defendant.

E. M. Reidy, Esq., for Interstate Commerce Commission, Intervenor.

Collins & Corbin, Esqs., by Charles W. Broadhurst and William T. Pierson, Esqs., for Baltimore & Ohio R. R., et al., Intervenors.

Parker McCallester, Esq., presented the Plaintiff's case.

E. M. Reidy, Esq., presented case for Interstate Commerce Commission.

William T. Pierson, Esq., presented case for intervening railroads.

S. R. Brittingham, Jr., Esq., presented case for United States of America.

Wilbur La Roe, Esq., further presented case for Plaintiff.

Stipulation by all of the parties placed on the record that the present Statutory Court as now convened is as though it were originally the Statutory Court as convened on June 19, 1941.

Parker McCallister, Esq., presented the Plaintiff's case.

Wilbur La Roe, Esq., presented the Plaintiff's case.

Court recessed from 12:30 P. M. to 1:30 P. M.

S. R. Brittingham, Jr., Esq., Special Ass't Attorney General presented case for United States of America.

Willis T. Pierson, Esq., presented case for intervening railroads.

E. M. Reidy, Esq., presented case for Interstate Commerce Commission.

Parker McCallister, Esq., further presented case for Plaintiff's.

Ordered Decision reserved.

Findings of Fact and Conclusion of Law to be submitted in 10 days.

Court adjourned at 3:00 P. M.

Charles E. Jaeckel, Deputy Clerk.

[fol. 108] IN UNITED STATES DISTRICT COURT

[Title omitted]

PLAINTIFF'S REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed April 28, 1942

Plaintiff requests the Court to make the following findings of Fact and Conclusions of Law, to wit:

This cause having come on for trial at Newark, New Jersey, on April 18, 1942, before the undersigned and the parties having by stipulation, by their respective counsel, consented and agreed that the case should be then heard by and tried before the undersigned, convened as a court for the purpose pursuant to Section 47 of the Judicial Code; and plaintiff being there represented by its counsel, Parker McCollester, of New York, N. Y., and Wilbur La Roe, Jr., of Washington, D. C., with John Drewen, of Jersey City, N. J., as resident counsel designated under Rule 3; the United States being represented by Smith R. Brittingham, Jr., of Washington, D. C., Special Assistant to the Attorney General; the Interstate Commerce Commission, intervener, being represented by E. M. Reidy, of Washington, D. C., its attorney; and the intervening trunk line railroads being represented by Charles W. Broadhurst, of Jersey City, N. J., Willis T. Pierson, of Cleveland, Ohio, Joseph F. Eshelman, of Philadelphia, Pa., and Francis R. Cross, of Baltimore, Md.; and there having been offered and ad-
[fol. 109] mitted in evidence a certified copy of the record before the Interstate Commerce Commission in the proceeding on the complaint of the plaintiff herein, in which proceeding were entered by the Commission the decision and order here sought to be reviewed and set aside, such record including a certified copy of the transcript of all the evidence taken before the Interstate Commerce Commission, with copies of all exhibits filed in the proceeding and admitted in evidence, and copies of the Commission's decision and orders; and such certified copy of the record before the Interstate Commerce Commission constituting all of the evidence before the court; and the parties by their attorneys having been heard on oral argument and briefs having been filed with and examined by the court, the undersigned now

make the following as their Findings of Fact and Conclusions of Law:

Findings of Fact

1. Plaintiff, Hoboken Manufacturers Railroad Company (hereinafter referred to as the Hoboken), a corporation organized and existing under the laws of the State of New Jersey, is a short switching line railroad operating along the waterfront of Hoboken, New Jersey, serving numerous steamship piers, including the piers of ordinary cargo or so-called break-bulk steamships and also the pier of Seatrain Lines, Inc. (hereinafter referred to as Seatrain). At its northern end it has track connections with the Erie Railroad, by means of which it interchanges cars containing freight with the Erie Railroad and through it with other trunk line railroads, including the intervening trunk lines.

2. The intervening defendants (hereinafter referred to as the trunk lines) are railroad corporations existing under [fol. 110] the laws of the various states and operating trunk lines of railroad between the New York waterfront and points in the Eastern part of the United States, and either individually or with other railroads with which they connect they perform railroad transportation of freight between New York Harbor, including Hoboken, and points of origin and destination in the Eastern part of the United States. They publish and keep on file with the Interstate Commerce Commission tariffs naming rates for such railroad transportation to and from New York Harbor, including the Hoboken waterfront and steamship piers reached by the switching line of plaintiff.

3. The railroad freight rates to and from New York Harbor, including the Hoboken waterfront, are of two sorts:

(a) So-called local rates, under which as to carload freight the railroads' terminal obligation and undertaking to the shippers is merely to place cars at convenient points for loading or unloading, the operation of loading and unloading being performed by the shippers or at their expense.

(b) So-called shipside or lighterage-free rates, under which it is the obligation and undertaking of the

railroads to the shippers to receive freight discharged from a ship on the pier or a lighter alongside the ship, furnish a car for the rail movement, move the freight to the car, and load the freight into the car, providing dunnage or bracing therefor where necessary; and in the case of freight moving in the reverse direction to switch or lighter the freight to the steamship pier, doing everything necessary to deliver the freight to the vessel in such a way as to obligate the vessel to receive [fol. 111] and transport it; this, by custom in the case of the ordinary type of break-bulk ship, including unloading the freight from the car and handling the freight to shipside where it can be conveniently reached by whatever tackle is used to load the ship.

This suit involves only these so-called shipside or lighterage-free rates and the division of these rates between plaintiff and the trunk lines.

4. As a switching railroad the Hoboken performs for the trunk lines the terminal services and obligations devolving upon them under these rates in connection with freight received from or to be delivered to steamships docking at piers served by the Hoboken. The trunk line railroads collect the freight charges on such freight in accordance with their tariffs and the Hoboken receives its compensation for its terminal services in the shape of so-called divisions or allowances paid to it by the trunk line railroads out of the freight charges collected by the latter.

5. Since 1920 there has been an agreement between the Hoboken and the trunk lines providing that the Hoboken's divisions should be as follows:

"carloads loaded or unloading by H. M. R. R. (the Hoboken) or at its expense, 1.35 per ton.

"Carloads loaded or unloaded by shipper or consignee or at their expense, .60 per ton."

(These divisions have been slightly changed in connection with percentage increases in the rates themselves but for convenience the parties used the foregoing and they are used herein.)

The division of 60 cents a ton represents the Hoboken's division of so-called local rates described in (a) of para-

graph 3 and the division of $1.35 represents its division of [fol. 112] shipside or lighterage-free rates described in (b) of paragraph 3, where in interchanging with ships it loads the freight into or unloads it from cars at its expense.

The division of 60 cents reimburses the Hoboken for the expense of switching or sheeling the cars. The division of $1.35 is made up of this 60 cents, plus 75 cents, the approximate or average cost to the Hoboken of loading or unloading freight into or from cars and the handling incident thereto.

Ordinarily, the Hoboken performs the unloading from and loading into cars and handling across steamship piers, not with labor hired directly by it but by making a contract with the steamship company concerned to do the work with steamship stevedore labor, the Hoboken paying the steamship company approximately 75 cents a ton.

6. The proceeding before the Commission related to the division to be received out of shipside or lighterage-free rates in connection with freight interchanged with the vessels of Seatrain Lines, Inc. and arose because the rates include compensation to the trunk lines for loading freight into or unloading freight from cars in interchanging with vessels, but the necessity for such loading or unloading is eliminated by Seatrain's type of ship and its patented crane and devices and because the terms of the agreement above quoted are not applicable to freight interchanged with Seatrain since cars are neither loaded or unloaded by the Hoboken or at its expense nor are they loaded or unloaded by the shipper or consignee at their expense.

7. Seatrain Lines, Inc., is a water carrier operating a new type of ocean-going steamship vessel designed to save the labor and expense of loading, unloading, handling and [fol. 113] furnishing cars ordinarily devolving upon the railroads at the ports in connection with freight transported by them under their so-called shipside or lighterage-free rates in interchanging such freight with steamships, this saving to be accomplished by a special type ship and the use of patented inventions, by which the freight is transferred between rail and vessel in the cars used for rail movement without breaking bulk or handling the freight itself. The transfer is accomplished by means of a large crane located on the pier alongside which the vessel docks,

a car being transferred by the crane between the hold of the vessel and the pier upon a so-called cradle, which fits into a well upon the pier so that the car can be pulled off or shoved on to the cradle by a small locomotive, the cradle also fitting into the hatch of the ship.

8. In 1932, Seatrain, which had been operating its type of vessels between New Orleans (Belle Chasse), Louisiana, and Havana, Cuba, since 1929, arranged for the construction of two additional vessels to inaugurate a service to and from New York Harbor and took steps to find a suitable location for a terminal in New York Harbor where its vessels could dock and where a crane could be located for the transfer of cars between its vessels and railroads. Negotiations were first had with various trunk line railroads and several locations were offered by them. However, it seemed desirable that Seatrain should locate its terminal at some point where it would have access to all the lines of the trunk line railroads, and such a location was offered by the Hoboken and negotiations were entered into between its then management and Seatrain.

9. In these negotiations with the Hoboken, Seatrain proposed that it would establish its terminal at a pier served [fol. 114] by the Hoboken and would interchange freight all loaded in railroad cars on the cradle, if, in consideration of the savings which would accrue to the Hoboken, the elimination of the necessity of furnishing empty cars for inbound freight, of disposing of empty cars on outbound freight, and of labor involved in loading, unloading and handling the freight, and in consideration of the added freight traffic which it was anticipated Seatrain's service would attract, the Hoboken would pay Seatrain 40 cents per ton on all freight interchanged. An oral agreement to this effect was arrived at. It then developed, however, that the Hoboken lacked sufficient funds to make the changes in its track layout and its other facilities necessary to handle the Seatrain traffic, and, indeed, that its continued operation was doubtful. For this reason Seatrain purchased the stock of the Hoboken from the trustees in liquidation of the previous owner, provided the Hoboken with a substantial amount of new capital and then entered into a written contract with it, dated November 21, 1932, embodying the terms

of the oral contract previously agreed to. That contract continued in effect until March 1, 1937, when it was changed to provide for the payment to Seatrain of 73 cents a ton but only on freight moving under lighterage-free or shipside rates.

10. After the first agreement had been entered into in 1932, the Hoboken asked its trunk-line connections to pay it a division or allowance on Seatrain freight of $1.00 a ton, made up of 60 cents to reimburse it for its switching cost and 40 cents to reimburse it for its payment to Seatrain. The trunk line railroads refused and paid it only 60 cents a ton on all Seatrain freight. When the contract was changed in 1937, the Hoboken asked a division of $1.35 per [fol. 115] ton only on freight moving on lighterage-free or shipside rates (60 cents plus 75 cents), but the trunk line railroads again refused and persisted in paying it only 60 cents per ton on all freight received from or delivered to Seatrain's vessels, although out of the same rates they paid the Hoboken $1.35 on freight interchanged with the Holland-America Line, Pan-Atlantic Steamship Co. and other steamship lines.

11. Thereupon plaintiff filed its complaint with the Interstate Commerce Commission asking the Commission, under Section 15 of the Interstate Commerce Act, to prescribe the just, reasonable and equitable divisions to be received by it and by the trunk lines, respectively, out of the shipside or lighterage-free rates to and from the Hoboken waterfront on freight interchanged with Seatrain. The trunk line railroads were made defendants in the proceeding.

12. Hearings were held before an Examiner of The Interstate Commerce Commission on this complaint. Evidence was offered on behalf of the Hoboken that in the original negotiations between Seatrain and the various trunk lines for a terminal of the property of one of them, one of the essential terms of the negotiations, to which no exception was taken, was that in consideration of Seatrain's locating its terminal at a pier served by one of the trunk lines, of the benefits to be received by the trunk lines therefrom and the savings in labor and expense to them, and in consideration of the use by Seatrain

of its patented devices, for which Seatrain paid royalties, the trunk lines should make a payment to Seatrain. This evidence was excluded by the Commission's Examiner. Other evidence was offered, however, and received by the Examiner that the trunk lines themselves made payments to various other steamship lines for services or operations [fol. 116] which reduced the operations and the labor of the trunk lines in interchanging freight and enabled the trunk lines to fulfill their obligations under their rates in interchanging freight with such steamship lines. There was evidence as to the Hoboken's costs and as to payments made by the Hoboken to other steamship lines for which the Hoboken was reimbursed by the trunk lines through the division of $1.35. The railroad operations of the trunk lines are no different in connections with Seatrain freight than their operations in connection with freight switched by the Hoboken and interchanged with other steamship lines and after paying the Hoboken a division of $1.35 out of a lighterage-free rate they would have the same revenue for the same rail service that they would have if the freight were interchanged with the Holland-America Line, Pan-Atlantic Steamship Co. or any other steamship line whose pier is served by the Hoboken. Also as bearing on the reasonableness of the division remaining to the trunk lines, evidence was introduced as to the costs to them of performing lighterage and as to other allowances paid by them out of the lighterage-free rates to show that after paying the Hoboken a division of $1.35 there would remain to the trunk lines net revenue as great as or greater than their net revenue after bearing the costs of lighterage or such other terminal payments.

13. The Commission's Examiner submitted a proposed report, to which exceptions were filed, after which there was oral argument before the Commission.

14. Under date of July 24, 1939, the Commission rendered its decision, in which it found that the division of 60 cents (as subsequently changed by percentage increases) paid by the trunk lines to the Hoboken on Seatrain traffic was not unjust, unreasonably low, inequitable, or unduly [fol. 117] prejudicial to the Hoboken. Based thereon, the Commission entered its order of the same date dismissing the complaint.

15. Thereafter the Hoboken filed with the Commission a petition for reconsideration, which the Commission by its order of April 1, 1940 denied.

16. In its decision the Commission found that the Hoboken as a switching line was entitled to receive divisions which would reimburse it for its full costs of handling the freight interchanged with Seatrain, including a fair return on the value of the property, but it concluded that 60 cents (with the subsequent percentage increases) represented such full cost and that the contract payments made to Seatrain were not a part of the Hoboken's costs of handling the traffic.

17. In its report of July 24, 1939, the Commission found:

> "Under lighterage-free rates the rail carriers undertake to unload freight from the cars and place it within reach of ship's tackle or to receive freight at the foot of ship's tackle and load it into the cars; under non-lighterage-free rates they do not undertake to unload or load the cars."

The Commission also found:

> "Whether it is entitled to a greater division out of the lighterage-free rates depends in large part on whether certain payments which complainant makes to Seatrain may be properly included in its costs for performing its part of the rail transportation to and from Hoboken."

The Commission found further:

> "The underlying justification for these payments is that, as it is not necessary to load and unload freight to and from railroad cars in making interchange with Seatrain, defendants are relieved of an expense of 75 cents per ton for loading or unloading which they incur when freight moving under lighterage-free rates is interchanged with other water carriers, and that, as this saving is possible because of Seatrain's investment and use of patented devices; such saving should [fol. 118] accrue to Seatrain and not to defendants."

18. In reaching its conclusion that no part of the payments made to Seatrain constituted a part of the Hoboken's costs for which it was entitled to reimbursement by the divisions paid to it by the trunk lines, the Commission found, first, that

> "The rail lines do all that is required when they place the cars in or take them from the Seatrain cradle. From this point of view the payments which complainant makes to Seatrain cover no part of its transportation service under the lighterage-free rates and are in addition to the full costs of that service."

In so finding, the Commission erred on the facts in that the evidence before it, including the contracts, clearly showed that regardless of the precise dividing line between the operations which are railroad and those which are ship, and although the physical operations for which the crane and other patented devices of Seatrain are used are the transfer of cars between the ship's hold and the track on the pier, the payments are not made for the purpose of having the railroads assume the expense of these physical operations but in consideration of the use of the cradle as the point of interchange; for the effects upon and benefits accruing to the Hoboken itself; for the furnishing to the Hoboken of a car along with the freight; for the elimination of labor in loading freight into or unloading freight from cars, which would be necessary if the freight cars were not transferred in the cars themselves; for the supplying of dunnage, which the Hoboken would otherwise have to do at its expense; and for the new business developed for the railroads, as well as for the privilege of accomplishing the railroads' obligation under their shipside rates of making delivery to a vessel by placing the car on Seatrain's cradle.

[fol. 119] 19. As a further ground for its decision, the Commission found that the payments might be justified as a part of the Hoboken's expense if they were "necessary for the purpose of inducing the establishment of the new method of transfer", but the Commission concluded that there was "no evidence, however, that payments were or are necessary for this purpose" and based this conclusion upon a finding that

"The contract between Seatrain and complainant, to which defendant rail lines are not parties, is not evidence of this effect, in view of the control which Seatrain exercises over complainant."

and the Commission further found:

"There is ample reason to conclude * * * that this plan has sufficient advantages to impel its use and promotion by Seatrain regardless of any contributory payments from rail connections."

20. There was uncontradicted evidence before the Commission that where railroad freight rates, like the lighterage-free or shipside rates to and from Hoboken, include compensation to the railroads for unloading freight from and loading freight into cars and handling across piers in order to interchange with steamships, Seatrain has in no instance entered into an arrangement with such railroad and established its terminal at a pier served by it except on the basis of receiving some consideration for the benefits and savings accruing to the railroad from its method of interchange.

21. Because of the corporate relation between Seatrain and the Hoboken, the Hoboken asked the Commission to consider and determine whether the payment of 73 cents (formerly 40 cents) provided by the contract represented reasonable compensation for the benefits derived by the Hoboken to be included in the costs for which the Hoboken [fol. 129] was entitled to reimbursement from the trunk lines and if 73 cents was not reasonable, then to determine what would be reasonable and fair compensation in the light of efficient management and operation of the Hoboken's properties. The Commission failed to make any finding on this question, finding, for the reasons above indicated, that no payment whatever to Seatrain could properly be included in the Hoboken's costs for which it should be reimbursed by the divisions to be received from the trunk lines.

Conclusions of Law

1. The Commissions' order dismissing the Hoboken's complaint, although in form a negative order, has the effect of requiring the Hoboken to continue to perform its termi-

nal service as a switching carrier for the trunk lines in transferring freight between the trunk lines and Seatrain for 60 cents per ton (with the subsequent percentage increases) and is therefore, in effect, an affirmative order which is subject to review in this proceeding. *Alton R. Co. v. United States*, 267 U. S. 229. Moreover, under *Rochester Telephone Corp. v. United States*, 307 U. S. 125, this court has jurisdiction regardless of the form of the Commission's order.

2. This court may not substitute its judgment for that of the Commission as to what would be reasonable divisions to be received by the Hoboken or as to what would be reasonable compensation to be paid by the Hoboken to Seatrain and to be included in the Hoboken's costs, for which it should be reimbursed by the divisions paid to it by the trunk lines. But if the Commission in rendering its de- [fol. 121] cision committed errors of law or disregarded or refused to receive evidence because of an erroneous belief that the evidence was not material or if the Commission failed to make a finding required of it, without which a proper determination could not have been made by it, this court may enjoin and set aside the Commission's order dismissing the complaint and may direct the Commission to reconsider its decision and take further proceedings in the light of the conclusions herein stated.

3. Reasonable payment to Seatrain for the benefits derived by the Hoboken and through the Hoboken by the trunk lines from the interchange with Seatrain and the use by Seatrain of its patented devices in connection therewith, is part of the Hoboken's costs of operation under efficient operation in the transfer of freight between trunk lines charge their lighterage-free or shipside rates, and have the obligations and undertakings for which they are compensated by such rates.

4. The Commission erred as a matter of law and failed to carry out the duty imposed upon it by the statute to give due consideration "to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property" in that the Commission failed to consider and make a finding as to whether the contract between the Hoboken and Seatrain was in the

interest of the efficient operation of the Hoboken as a rail carrier, and failed to consider and make a finding as to what payment by the Hoboken to Seatrain would be reasonable compensation, consistent with such efficient operation, for the benefits derived by the Hoboken and the trunk lines from the interchange arrangement with Seatrain, to be included in the Hoboken's costs for which it is entitled [fol. 122] to be reimbursed by the divisions paid to the Hoboken by the trunk lines.

5. In finding and in basing its decision upon a finding that the payments to Seatrain cover no part of the Hoboken's railroad transportation as a switching carrier for the trunk lines under the lighterage-free or shipside rates published by them, the Commission's decision was contrary to the evidence and arbitrary, constituting a denial of due process of law, in that it ignored the uncontradicted evidence as to the elimination of labor, the furnishing of cars, the added traffic and the other benefits received by the Hoboken and the trunk lines in connection with their railroad operations as a result of being able to interchange freight loaded in cars on the cradle, in consideration for which benefits the payments were contracted for.

6. The Commission erred as a matter of law and its decision is inconsistent and arbitrary in that the Commission based its conclusion upon a finding that interchange takes place when cars are placed upon or taken from the cradle but ignores the fact that this is so only because of the contract itself, by which Seatrain in consideration of the payments provided for in the contract agrees to allow the cradle to be used as a place of interchange and agrees to interchange thereon.

7. The Commission erred as a matter of law in denying any force to the contract between the Hoboken and Seatrain as constituting an obligation upon the Hoboken to make payments on the ground that when the agreement was reduced to writing Seatrain had acquired all of the Hoboken's stock.

8. The Commission erred as a matter of law in failing to find that in the absence of any evidence that Seatrain used its stock ownership of the Hoboken fraudulently, the [fol. 123] contract between them constituted a binding obligation and the payments provided thereunder, or payments

of some other amount determined by the Commission to be reasonable and consistent with efficient operation, were necessary parts of the Hoboken's costs of handling the traffic involved, because without them it could not have secured the location by Seatrain of its terminal at Hoboken nor the benefits derived by the Hoboken and the trunk lines from Seatrain's method of interchange and from Seatrain's agreement to interchange freight loaded in cars on the cradle.

9. In failing to find that the substance of the contract was agreed to when Seatrain and the Hoboken were bargaining at arm's length, the Commission's decision was arbitrary and arbitrarily ignored uncontradicted evidence before it.

10. The Commission erred and its action was arbitrary when it excluded evidence that when Seatrain was negotiating for a terminal at a pier served by one of the trunk lines, some payment by the trunk lines to Seatrain was one of the terms of the negotiations, such evidence bearing upon the question whether the payment was "necessary" in order to secure the advantages of interchange with Seatrain.

11. In requiring the Hoboken to perform transportation at divisions which fail to reimburse it for any payment to Seatrain, the indirect effect of the Commission's order, since the Hoboken cannot pay Seatrain if it is not reimbursed for such payments by the trunk lines, is to deprive Seatrain of any compensation for the use of its patents and of any compensation for the benefits derived by the Hoboken and the trunk lines from the method of interchange thereby made possible. In thus transferring to the trunk lines the entire savings accomplished by the use of [fol. 124] Seatrain's type of vessel and patented interchange devices and denying Seatrain compensation, the Commission's decision and order violate the Fifth Amendment to the Constitution of the United States.

12. The division of 60 cents (with the subsequent percentage increases), found reasonable by the Commission, was less than the Hoboken's costs of handling the traffic and the effect of the Commission's order dismissing the complaint was to require the Hoboken to perform transportation for less than its cost of so doing.

13. In requiring the Hoboken to perform transportation at divisions which fail to reimburse it for its full costs of handling the traffic, including the payment of reasonable compensation to Seatrain, the Commission's order is confiscatory in violation of the Fifth Amendment to the Constitution of the United States.

14. The order of the Commission dismissing the Hoboken's complaint should be set aside and annulled and the Commission should be directed (a) to reconsider its decision; (b) to determine whether or not the amount of the payment by the Hoboken to Seatrain provided for by the contract is reasonable and consistent with the efficient operation of the Hoboken and the trunk lines in consideration *fo* the benefits derived by them from the elimination of labor and handling, the furnishing or removal of empty cars, the supplying of dunnage or bracing for the point of interchang and the added traffic developed by Seatrain's type of service; (c) if the Commission should conclude that the amount of the contract payment is in excess of reasonable compensation, then to determine what would be reasonable compensation consistent with efficient operation; and [fol. 125] (d) to determine the division to be paid to the Hoboken by the trunk lines out of their lighterage-free or shipside rates in such amount as will reimburse the Hoboken for its costs, including the amount of such reasonable payment to Seatrain, together with a fair return on the value of the railroad property used by the Hoboken for the purposes of transportation.

——, United States Circuit Judge; ——, United States District Judge; ——, United States District Judge.

[fol. 125a] The foregoing request for Findings of Fact and Conclusions of Law is respectfully submitted for plaintiff.

Parker McCollester, Attorney for Plaintiff, Office and P. O. Address, No. 25 Broadway, New York, N. Y.; John Drewen, 921 Bergen Avenue, Jersey City, New Jersey, Resident Counsel designated under Rule 3; Wilbur LaRoe, Jr., Investment Building, Washington, D. C.; Lord, Day & Lord, 25 Broadway, New York, N. Y., of Counsel.

[fol. 126] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

SUGGESTED FINDINGS OF FACT AND CONCLUSIONS OF LAW SUBMITTED BY DEFENDANT AND INTERVENING DEFENDANTS—Filed April 29, 1942

The Court hereby adopts the following

Findings of Fact

1. On December 31, 1936, there was filed with the Interstate Commerce Commission a complaint, Docket No. 27630, *Hoboken Manufacturers' Railroad Company* v. *The Akron, Canton & Youngstown Railway Company, et al.*, in which complainant, Hoboken Manufacturers Railroad Company, alleged that the divisions it was receiving out of joint class and commodity rates on traffic interchanged by it with Seatrain Lines were unjust and unreasonable, in violation of the Interstate Commerce Act, and wherein it sought an increase in such divisions. The complaint prayed that the Commission, after full hearing, enter an order requiring the Eastern Trunk Line defendants to cease and desist from violating the said Act. Numerous rail carriers in Central [fol. 127] Freight Association, Trunk Line, and New England territories, as well as various southern and southwestern railroads, were named as defendants in the Commission proceeding.

2. Extensive hearings were conducted by an examiner of the Commission, at which all interested parties appeared and introduced pertinent testimony. An examiner's proposed report issued, to which exceptions were filed by the Hoboken, and a reply was filed by the rail-defendants. The proceeding was also fully briefed and orally argued before the Interstate Commerce Commission.

3. Thereafter a report of the Commission, dated July 24, 1939, and reported in 234 I. C. C. 114, was served upon all interested parties, which report is referred to and made a part of the petition in this case as Exhibit B.

4. In its report of July 24, 1939, the Commission made the following ultimate finding:

> "We find, therefore, that complainant's divisions here in issue are not unjust, unreasonably low, inequit-

able, or unduly prejudicial to complainant and that the corresponding divisions received by the defendant rail lines are not unjust, unreasonably high, inequitable, or unduly preferential of them. The complaint will be dismissed."

5. The Hoboken is a single-track terminal-switching line extending along the water front of Hoboken, N. J., a distance of 1.632 miles and connecting, at its northern end, with the Erie Railroad and through the Erie with other trunk lines reaching New York Harbor. Since August, 1938, it has had interchange with the Delaware, Lackawanna & Western Railroad through a float bridge. In addition to its main line, the Hoboken has numerous yard tracks and sidings, a freight house, and team tracks. It serves numerous piers, at which various steamship lines regularly dock, and about 20 industries.

[fol. 128] 6. Seatrain is a common carrier by water subject to the jurisdiction of the Interstate Commerce Commission. The value for rate-making purposes of Hoboken's property, owned or used, devoted by it to common-carrier purposes was $1,625,000 as of December 31, 1933. Retirements to December 31, 1937, exceeded additions and betterments by $9,862, leaving a valuation of $1,616,138 as of the latter date. (Pet. p. 37) Since October 6, 1932, Seatrain has operated vessels, on which it transports freight in railroad cars, between Hoboken, N. J., and Belle Chasse, La., via Havana, Cuba. Belle Chasse is on the west bank of the Mississippi River about 10 miles south of New Orleans.

7. All shares of Hoboken's capital stock, except five directors' qualifying shares, are owned by the Seatrain, and all of its principal officers are officers of Seatrain. Six of Hoboken's seven directors are also directors of Seatrain.

8. The method of interchanging freight with Seatrain is described in *Investigation of Seatrain Lines, Inc.*, 195 I. C. C. 215, 219, where the Commission said:

"Seatrain vessels are approximately 480 feet long, with 63-foot beams, and have a speed of 16.5 knots, or better. They are ocean-going vessels built to specifications of Lloyds-Register and the American Bureau for World Wide Trade. While the original vessel has

tank space for 2,200 tons of liquid cargo, and the new vessels have tank space for 4,000 tons of liquid cargo, each vessel is designed primarily for transportation of cargo only when loaded in railroad cars. Each vessel has four decks, and each deck has four sets of railroad tracks of standard gage, the aggregate length of tracks on each vessel being approximately 1 mile. The original vessel has a capacity of 95 cars, and each of the new vessels has a capacity of 100 cars. These vessels can handle cargo in railroad cars only between ports at which special loading facilities have been provided. Such facilities have been provided at only three ports, namely, Hoboken, New Orleans, and Havana.

[fol. 129] "The loading facilities consist of a combination elevator and crane, the elevator shaft being erected on the dock, and the stationary arms of the crane extending from the frame of the elevator shaft out over the slip. The floor of the elevator is a movable platform called a cradle on which is laid a single track of standard gage. The cradle, when in place on the dock, forms a section of the railroad track over which cars are moved to and from the cradle. The loading facilities at Havana and New Orleans are owned by Seatrain. Those at Hoboken are owned by the Hoboken, and together with the pier and necessary supporting tracks are leased by Seatrain. Those at New Orleans are located on the property of the New Orleans & Lower Coast Railroad Company, a subsidiary of the Missouri Pacific, and those at Hoboken are located on the property of the Hoboken.

"In loading a Seatrain vessel a car is moved by locomotive over the railroad tracks of the Hoboken or the New Orleans & Lower Coast, as the case may be, and stopped on the section of track laid on the cradle where it is blocked and secured. The four corners of the cradle are connected to bails which in turn are attached to an overhead crane. The crane through the bails and cradle lifts the car vertically until the car and cradle are higher than the bulwark of the vessel. Car and cradle are then moved along the arms of the crane to a position over one of the four hatchways of the vessel and lowered through the hatchway, which forms another elevator shaft, to one of the four decks

on which the car is to be stowed. The cradle for the time being becomes a part of that particular deck, the tracks on the cradle articulating with the tracks on the deck to form a continuous track over which the car is moved from the cradle by a car puller to the desired position on the deck track, where it is secured and made fast to take care of motion of the ship while at sea. When a deck has been loaded the cradle is left in place and serves as a hatch cover for that deck. Unloading is the reverse of the process of loading. Often cars may be loaded and unloaded at the same time. That is, the cradle instead of being hoisted out empty is loaded with a car, lifted out of the ship moved along the crane arms to the elevator shaft over the dock, and lowered to position in the railroad track over which the car is moved from the cradle by a locomotive.

"Seatrain vessels and loading devices are not patented, but the idea embodied by the Seatrain vessels for carrying cars and for transferring cars from railroad tracks or from the deck of another ship of tracks laid on Seatrain vessels is patented. Seatrain has the exclusive right to use these patents."

The crane, which, with its substructure, cost about $85,000, together with the pier on which it is erected and a [fol. 130] slip alongside the pier at which Seatrain vessels are berthed, is leased by Seatrain from Hoboken. Rental for such facilities is based on Hoboken's expenditures for rent, taxes, insurance, depreciation, repairs, maintenance, and dredging, plus 6 per cent return on the Hoboken's investment in the property. The rental for the year beginning March 1, 1937, the effective date of the present contract, was $19,668.07 for the pier and slip and $13,219.16 for the crane.

9. The traffic which Hoboken interchanges with railroad defendants may be divided into four general classes: (1) Carload freight from and to private sidings and team tracks, which is loaded and unloaded at the consignee's expense, (2) less-than-carload freight from or to Hoboken's freight house, which is loaded or unloaded by Hoboken, (3) freight from and to steamship lines other than Seatrain, and (4) freight from and to Seatrain. Some of the freight from and to Seatrain and some of that from and to other

steamship lines moves under so-called lighterage-free rates and some under local or so-called non-lighterage-free rates. When lighterage-free rates are applicable, the railroads are obligated to place the freight alongside the steamship within reach of the ship's tackle or receive the freight at the foot of the ship's tackle. If the steamship is a break-bulk carrier, the railroads at their expense load or unload the freight cars if necessary to placement or receipt of the freight at the foot of ship's tackle. Where this is done for them by the Hoboken, they compensate the latter therefor through divisions of the freight revenue. The expense incurred in loading or unloading the ship is borne by the steamship line. On freight not lighterage-free the railroads are not obligated to place or receive the freight at the foot of ship's [fol. 134] tackle. On such freight the railroad cars are placed on the piers if they have railroad tracks, and if not, at the rail point nearest to shipside, and the cars are loaded or unloaded at the expense of the steamship line or others, and not at the expense of the railroads.

During the months of May, July, September, and November, 1936, and January and March, 1937 the Hoboken interchanged 2,961 carloads with Seatrain and the trunk lines. The average weight of these carloads was 57,011 pounds or 28.5 tons. Approximately three-fourths of the cars moved in coastwise service and one-fourth originated in or were destined to Cuba. Approximately 40 per cent of the cars moved under lighterage-free rates and 60 per cent under non-lighterage-free rates.

19. Cars for Seatrain are placed by the Hoboken in a hold-yard, a short distance from the pier of the Seatrain, approximately 2500 feet from the point of interchange with the Erie. Such cars are switched from the hold-yard to the pier in the order designated by the Seatrain, usually one at a time, and placed at the car cradle where Hoboken's services terminate. Cars coming from the Seatrain are switched one at a time from the car cradle to the hold yard, from which strings of cars are switched to Hoboken's main yard. Those cars which are to be interchanged with the rail defendants move to the Erie interchange tracks if they contain domestic traffic; if they contain foreign freight they are generally held on convenient tracks for inspection and other purposes and then moved to the Erie interchange. The

Erie performs the classification as to line-haul carriers on all of the cars.

[fol. 132] The Hoboken, although a short terminal switching line, has for many years participated in joint rates with the rail defendants and received divisions thereof. As the result of a compromise agreement between the Hoboken and the rail defendants in 1927, prior to the inauguration of the Seatrain service and when the Hoboken was owned and operated by the United States Government, divisions were established whereby the Hoboken received $1.35 per ton on lighterage-free freight when loaded or unloaded at its expense and 60 cents per ton on non-lighterage-free freight not loaded or unloaded at its expense. While at the time of the hearing before the Commission these divisions had been increased to correspond with general increases in rates authorized by the Commission in Ex Parte No. 123, 226 I. C. C. 41, reference herein will be made to the original divisions in the interest of simplicity of statement and as illustrative.

11. One of the advantages of the Seatrain service is that the expense of loading and unloading freight to and from cars, necessary to through transportation in connection with other water carriers, is not necessary to through transportation in connection with the Seatrain. Because there is no necessity for loading or unloading of cars to effect interchange, the railroad defendants, ever since the inauguration of Seatrain service, have paid the Hoboken a division of 60 cents on all freight interchanged by it with the Seatrain, whether moved on lighterage-free or non-lighterage-free rates, except that for a short period of time two of the rail defendants paid the Hoboken a division of $1.00 per ton on all Seatrain traffic. The Commission found that whether Hoboken is entitled to a greater division out of [fol. 133] the lighterage-free rates depends in large part upon whether certain payments which it makes to the Seatrain may be properly included in its costs for performing its part of the rail transportation to and from Hoboken.

The payments referred to are those presently made under a contract entered into between Seatrain and the Hoboken on March 1, 1937, after the filing by the Hoboken of its complaint to the Commission seeking increased divisions. This contract provides that the Hoboken shall pay the Sea-

train 73 cents per ton on all freight interchanged between them which moves on lighterage-free rates, but nothing on freight moving on non-lighterage-free rates. This contract superseded the original contract entered into November 21, 1932, which provided that Hoboken should pay Seatrain 40 cents per ton on all freight, other than coal, interchanged between them. A part of the consideration for this payment was that Seatrain, as agent for Hoboken should move the cars between Hoboken's hold yard and Seatrain's car cradle, the agreed point of interchange. Under the latest contract the Seatrain does not move the cars between Hoboken's hold yard and the car cradle, all such service being performed by the Hoboken.

12. In 1936, Hoboken paid Seatrain under the 1932 contract approximately $110,000 on the 9,227 cars interchanged, and in 1937, when the 1932 contract was in effect for the first 2 months and the 1937 contract in effect for the other 10 months, Hoboken paid Seatrain $9,856.36 less than it would have paid if the 1932 contract had been in effect during the entire year, or approximately $100,000 on the 9,245 carloads interchanged. The average loading of these cars was approximately 30 tons, and the payments averaged about [fol. 134] $12 per car on all cars interchanged in 1936, $22 per car on the approximately 50 per cent of the cars interchanged in 1937 that moved under lighterage-free rates, and nothing on the approximately 50 per cent that moved under non-lighterage-free rates.

13. The United Railways of Havana, which interchanges traffic with the Seatrain at Havana, and the New Orleans & Lower Coast Railroad, which interchanges with it at Belle Chasse, do not make similar payments to the Seatrain. The rates of the United Railways of Havana are stated to be equivalent to non-lighterage-free rates, and if it were required to make such a payment to Seatrain, its net revenues would be less than on traffic via break-bulk carriers. For this reason Seatrain considers that its investment and patents are used at Havana in its own service and not in the service of United Railways. The reason given for not demanding a similar payment from the Lower Coast is that the location of Seatrain's terminal at Belle Chasse saves it about 17 miles of steaming to the City-front piers in New Orleans, which Seatrain considers a valuable consideration to it, and, further, that if such a payment were

demanded and the line-haul carriers had to absorb it they would have to absorb more than on traffic via the break-bulk lines, which Seatrain considers would be unfair to them.

14. The Seatrain patents, which will expire in 1944, are owned by Railway Transports, Incorporated, and Seatrain, as the exclusive licensee of the owner, pays royalties of approximately $50,000 a year.

15. After reviewing the Hoboken's costs for switching all cars in 1936 and 1937, together with its revenues per car, and other matters, the Commission concluded that the former division of 60 cents and the present divisions of 68 [fol. 135] and 66 cents, was sufficient to cover the cost of the service performed by the Hoboken, and also a reasonable return on property owned or used by it in performing such service.

16. After reviewing the evidence, the Commission concluded that, if Hoboken's adjusted net income were further adjusted to the basis of the revenues actually received, it would have had deficits of approximately $18,000 in 1936 and $106,000 in 1937. If, however, Hoboken had not paid Seatrain approximately $110,000 in 1936 and $100,000 in 1937, under the contracts heretofore referred to, its net income in 1936 would have been approximately $92,000 and its deficit in 1937 approximately $6,000, or an average net income for each of the two years of $43,000. A portion of the payments by Hoboken to Seatrain, however, was on carload traffic to and from points on Hoboken's line, on which Seatrain paid Hoboken's rates of $1 per ton in 1936 and the first 2 months of 1937, and $16 per car on non-lighterage-free freight and $16 per car plus 75 cents per ton on lighterage-free freight during the last 10 months of 1937. While the record does not show the amount of such tonnage or how much of such tonnage during the last 10 months of 1937 moved on lighterage-free rates, it does indicate that the payments by Hoboken to Seatrain on this traffic aggregated about $40,000 a year. Accordingly, the Commission concluded, if the income account as adjusted by Hoboken were further adjusted to the basis of the divisions actually received from the rail defendants and similar charges on traffic interchanged with Seatrain alone, with the payments by Hoboken to Seatrain eliminated, an average yearly net income of about $3,000 for 1936 and 1937 is indicated.

[fol. 136] 17. The Commission's report shows that, prior to March 1, 1937, Hoboken's charge on Seatrain's local carload traffic was $1 per ton and subsequent to that date $16 per car on non-lighterage-free and $16 per car plus 75 cents per ton on lighterage-free traffic, and Hoboken repaid to Seatrain 40 cents per ton prior to March 1, 1937, and 73 cents per ton subsequent to that date on lighterage-free traffic. If Hoboken's net charge on this traffic during the last 10 months of 1937 had been 60 cents per ton, the same as its division on Seatrain's carload traffic interchanged with the rail defendants and for a comparable service, its income would have been increased approximately $3,000.

Seatrain's so-called lighterage traffic is not interchanged with Hoboken but is handled by Hoboken between the car cradle and Seatrain's pier, a maximum distance of about 400 feet, as Seatrain's agent. Prior to March 1, 1937, Hoboken charged Seatrain 40 cents per ton for this movement but since that date has charged $2.50 per car. Hoboken's service under these charges includes the necessary handling of empty cars to or from the pier as well as the loaded-car movement. Hoboken shows that during the last 10 months of 1937 its total charge to Seatrain for this service was $1,196.99, which indicates that such movement consisted of 478 carloads and that the average charge on the basis of 40 cents per ton would have been $14.55 per car. The reduction in the charge from 40 cents per ton, which Seatrain had paid for about four and one-half years, to $2.50 per car was not based on any cost study but was made as a part of the general changes in contractual relations between Hoboken and Seatrain at that time. While it is not intended to find on this record that 40 cents per ton is a reasonable [fol. 137] charge for this service, it is believed that in comparison with Hoboken's other charges and divisions it is more appropriate than the existing charge of $2.50 per car. If Hoboken's income account for 1937 were further adjusted to reflect a net charge of 60 cents per ton on Seatrain's local carload traffic and a charge of 40 cents per ton on Seatrain's lighterage traffic, its income would be increased approximately $9,000, and its average yearly net income for 1936 and 1937 would have been about $7,500. If to this were added the average fixed charges for rent of road and interest on debt in 1936 and 1937, approximately $57,000, the total would have been equivalent to a 4 per cent return on the value of the property owned or used and

devoted by Hoboken to common-carrier purposes as of December 31, 1937. It is indicated that, on the basis of Hoboken's 1937 traffic, the increases in Ex Parte No. 123 would produce revenue of approximately $20,000 a year, an increase of approximately $13,500 a year over the average revenues received from emergency charges in 1936 and 1937.

As contrasted with Hoboken's income accounts for 1936 and 1937 as adjusted by it and as further adjusted, the Commission found that the net railway operating income for 10 New York Harbor railroads show at a rate of return on investment in railway property used in transportation ranging from nothing to 3.23 per cent in 1936 and from nothing to 2.72 per cent in 1937, and for the 10 roads as a whole 2.67 per cent in 1936 and 2.21 per cent in 1937. Four of the ten roads, namely, the Erie, the New Jersey & New York, the New York, Ontario & Western, and the New York, Susquehanna & Western, are in bankruptcy.

[fol. 138] 18. The report of the Commission shows that during the months of March and September, 1937, Hoboken interchanged with the rail defendants 1102 cars of Seatrain traffic, on which the average loading was 30.9 tons, the average rail haul 258 miles, and the average revenue $120.86 per car. Hoboken's revenue on such traffic at 60 cents per ton was $18.54 per car and 15 per cent of the total revenue. On the basis of a division of $1.35 it would have been $40.72 per car, leaving slightly less than two-thirds of the total revenue to the rail defendants for their 258-mile haul and terminal service at origin.

19. The Commission concluded that in determining the divisions which a short-line railroad should receive out of joint rates with trunk-line connections for switching service, the full cost of the service, including a fair return, should be the test, unless it is shown that the joint rates are on an unremunerative level for reasons beyond the control of the trunk-line railroads, including the effects of general traffic depressions. A short-line railroad of this character cannot fairly expect to be relieved from the general results of such depression by corresponding increases in its divisions or switching charges. Further, that the service which the railroads hold themselves out to perform under the lighterage-free rates includes the unloading of inbound cars and the placing of the lading within reach of ship's tackle and a corresponding but reverse service in connection with

out-bound freight, if necessary in order to deliver or receive freight within reach of ship's tackle. The Commission stated: "For purposes of its own, Seatrain prefers to receive and deliver the loaded car," which makes unnecessary the loading or unloading of the car lading. Continuing the Commission found:

> [fol. 139] "The rail lines do all that is required when they place the cars in or take them from the Seatrain cradle. From this point of view the payments which complainant makes to Seatrain cover no part of its transportation service under the lighterage free rates and are in addition to the full costs of that service."

The Commission found that the payments made by the Hoboken to Seatrain are not made for any service which the rail lines perform or are obligated to perform under their lighterage-free rates.

20. The report of the Commission further shows that, while the method of transfer involved in this case puts the connecting rail lines to less expense under the lighterage-free rates than the old method, and it was argued that they would be justified in making any payments necessary for the purpose of inducing the establishment of the new method of transfer, the Commission concluded that there was no evidence before it here that payments were or are necessary for this purpose; that the contract between the Hoboken and the Seatrain, to which the defendant rail lines are not parties, is not evidence to this effect, in view of the control which Seatrain exercises over the Hoboken; that no such payments have been exacted or obtained by the Seatrain from an independent rail connection; that there is ample reason to conclude that the improved method of transfer is only an incident to the Seatrain plan of transportation, and that this plan has sufficient advantages to impel its use and promotion by the Seatrain regardless of any contributory payments from rail connections.

21. The Commission said that while it might be true that if the rail defendants do not bear the payments which Hoboken now makes to Seatrain, through an increase in Hoboken's divisions, they will receive an unearned benefit, but [fol. 140] conclude that this result comes about from the fact that this new method of transfer makes it unnecessary for the rail lines to perform all the service which they hold

themselves out to perform under the lighterage-free rates. The Commission further found that these rates are based on average conditions, and a similar unearned benefit would accrue if a steamship company now docking on the Manhattan waterfront and served by lighter should shift to a dock with direct rail connections on the Jersey shore, in which event it would not be suggested that the rail lines should compensate the steamship company for the change.

22. The Commission concluded that the payments which the Hoboken makes under its contract with the Seatrain cannot properly be regarded as a necessary part of the costs of this service, and if these payments are not included, the record warrants the further conclusion that the Hoboken is adequately compensated for in its existing divisions.

23. An order of the Commission was entered on the same day as the issuance of its report, July 24, 1939, dismissing the complaint. Following the denial of a petition for reconsideration, on August 27, 1940, the petition in this case was filed seeking to set aside the Commission's order of July 24, 1939, upon the grounds that the Commission had committed errors of law and its order was based upon findings and conclusions which were also erroneous as a matter of law and without support in and contrary to the evidence.

24. A three-judge court was convened pursuant to the provisions of the statute, 28 U. S. C. 41, and the court has jurisdiction to entertain and pass upon the issues involved in this case.

[fol. 141] 25. The entire record upon which the Commission's order of July 24, 1939 is based, has been introduced and is before the court for its consideration in reaching decision.

Based upon the facts of record herein and upon the foregoing findings of fact, the court makes and adopts the following

Conclusions of Law

1. The Commission's report and order of July 24, 1939, in Docket No. 27630, *Hoboken Manufacturers' Railroad Company* v. *Akron, Canton & Youngstown Railway Company*, is valid in all respects.

2. The Commission's findings are adequate to support its order.

3. The order is not beyond the statutory powers of the Commission in any respect, is not arbitrary, and is not based on findings or conclusions which are erroneous in any respect.

4. The Commission's order involved herein does not violate the constitutional prohibition against the taking of property without just compensation or without due process of law, and is not confiscatory.

5. The Commission's order is supported by the evidence.

6. The petition herein is dismissed, at plaintiff's costs.

—— ——, United States Circuit Judge; —— ——, United States District Judge; —— ——, United States District Judge.

April —, 1942.

[fol. 142] In the District Court of the United States

[Title omitted]

Proposed Final Decree

Now on this — day of April, 1942, this cause having been finally submitted and the court being fully advised in the premises, having heretofore filed its findings of fact, conclusions of law and opinion herein, it is

Ordered, Adjudged, and Decreed, That plaintiff's petition be dismissed on the merits with costs.

—— ——, United States Circuit Judge; —— ——, United States District Judge; —— ——, United States District Judge.

[fol. 143] IN THE UNITED STATES DISTRICT COURT

Civil Action No. 1100

HOBOKEN MANUFACTURERS' RAILROAD COMPANY, Plaintiff,

v.

UNITED STATES and INTERSTATE COMMERCE COMMISSION, et al., Defendants.

OPINION—November 24, 1942

Before Biggs, Circuit Judge, and Fake and Smith, District Judges. Biggs, Circuit Judge

The plaintiff, Hoboken Manufacturers' Railroad Company, in the case at bar seeks to set aside an order of the Interstate Commerce Commission, dated July 24, 1939, finding, after full hearing, that the divisions received by it out of joint class and commodity rates on traffic interchanged by it with Seatrain Lines, Inc., were not unjust or inequitable.

The plaintiff is a short switching railroad which runs along the waterfront of Hoboken, New Jersey. It connects with the Erie Railroad and through the Erie with other trunk line railroads. It exchanges freight and cars with those railroads. The Hoboken Railroad (to which we will refer hereafter as "Hoboken") also serves industries and steamship piers along the Hoboken waterfront and, in particular, the pier of Seatrain Lines, Inc.

The defendant is the United States of America. The Interstate Commerce Commission was made a defendant, pursuant to the provisions of Sections 212 and 213 of the Judicial Code, as amended, 38 Stat. 220, 28 U. S. C. A. § 45 (a). Many of the eastern trunk line carriers intervened, and the [fol. 144] argument for these carriers has been made by the Baltimore & Ohio Railroad Company.

This court has jurisdiction, pursuant to the provisions of the Acts of June 10, 1910 and October 22, 1913, the Commerce Act and the Urgent Deficiencies Act, as set forth in 38 Stat. 219, 28 U. S. C. A. § 41 (28) and 38 Stat. 219-220, 28 U. S. C. A. §§ 43-48 inclusive. The suit at bar was brought to review a decision and order of the Commission dismissing a complaint brought by Hoboken, to secure a determination by the Commission of the just, reasonable, and equitable

divisions of the joint through rates on lighterage-free freight interchanged by Hoboken with Seatrain Lines, Inc.

Seatrain Lines, Inc. (hereinafter referred to as "Seatrain"), operates three ships. These are fast fourdecked vessels, carrying standard gauge railroad tracks. Two of the vessels can carry one hundred freight cars each and the third ninety-five cars. The vessels operate between Hoboken, New Jersey and Belle Chasse in Louisiana, via Havana, Cuba. When a Seatrain ship is put in position at its dock, it is next to a "cradle" which, by means of a large overhead crane, lifts the loaded freight car from the dock and carries it through one of a number of large hatches on the ship to one of the tracks within the vessel. The tracks of the cradle fit the tracks on ship, and the car is then pushed off the cradle to its place on the ship by a special little engine. There is one cradle for each track on each deck of the vessel and, when the loading of each deck is accomplished, the cradles are left in place flush with the deck, each cradle closing a hatch. In taking the car from ship to shore the process is reversed. By the use of the Seatrain method, goods and merchandise may be transported from shore to ship and from ship to shore without breaking bulk, and the necessity of loading and unloading the freight is eliminated.

This method of interchange is used between Seatrain and Hoboken. Approximately 40% of the cars interchanged by Hoboken with Seatrain move under lighterage-free rates, and about 60% under non-lighterage-free rates. With Sea- [fol. 145] train freight regardless of how it is billed, whether as lighterage-free freight or non-lighterage-free freight, it is handled by Hoboken in precisely the same physical fashion.

When freight is shipped on lighterage-free rates, the carrier undertakes to deliver the freight at the foot of ship's tackle without any charge for lighterage.[1] The term lighterage is used to describe all those steps taken to deliver freight

[1] Lighterage has been defined as loading, unloading, or transportation by means of a lighter. The word came into use at a time when docking facilities frequently were insufficient to accommodate large ships which therefore stood out in the harbor. Merchandise was carried to them by smaller vessels or lighters.

from a railroad car to a point where the ship's tackle may lift it to the ship. Lighterage, therefore, is the loading, unloading, and transfer of freight between a car and a ship's side. In the case at bar we are concerned only with the lighterage-free rate; and how it shall be divided between Hoboken and the trunk line carriers.

The Commission has established a through rate of $7.00 per ton, to shipside. On break-bulk lighterage-free freight the trunk lines receive for their share $5.65, and Hoboken receives $1.35. Of this $1.35, 60¢ goes to Hoboken as compensation for switching charges and 75¢ goes to it as reimbursement for the cost of loading, unloading, and transferring freight between the freight cars and shipside. On Seatrain freight, using that phrase to describe freight contained in cars lifted on the cradle to or from the Seatrain ship and in which the bulk is not broken, of the $7.00 through-rate to shipside, the trunk lines have refused to allot to Hoboken more than the sum of 60¢ for its switching [fol. 146] charges, retaining the 75¢, which was saved due to elimination of loading and unloading charges. Hoboken claims that upon Seatrain freight the trunk lines should receive $5.65 as their share and Hoboken should receive 60¢ for switching as usual, and 75¢ to reimburse it for payments made to Seatrain for the right to use the special Seatrain labor-saving and time-saving facilities. Hoboken contends that, while it may not be entitled to the full sum of 75¢ in this connection, it is entitled to some part of the 75¢ for the facilities which it has made available which permit shipping by sea without breaking bulk.[2]

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[2] We have used these break-down figures on the $7.00 through-rate because the parties really have argued their case upon this basis. There have been some slight changes in the break-down figures, but these are small. We think that if we employed the changed figures in this opinion confusion might result. We will refer to them briefly in this note.

The divisional allowance to Hoboken, prior to March 28, 1938, the effective date of the decision of the Commission in *Ex Parte 123, Fifteen Percent Case*, 1937-1938, 226 I. C. C. 41, was $1.35 per ton, which amount represented 60¢ for switching and 75¢ for loading or unloading the cars. The $1.35 division was increased under Ex Parte 123,

The contentions of Hoboken must be examined in the light of the corporate relations existing between Seatrain and Hoboken. Prior to 1932, Seatrain had begun negotiations with Hoboken for the use of the terminal facilities. Seatrain then learned that Hoboken was insolvent and bought up all of its stock at auction. Seatrain now owns all of the 4000 shares with the exception of five qualifying directors' shares. Six of Hoboken's seven directors are also directors of Seatrain. Four of Hoboken's eight officers are officers of Seatrain.

[fol. 147] Graham M. Brush, the president of Seatrain and of Hoboken, is the inventor of the Seatrain ship and of the appliances for loading and unloading freight cars into and out of such ships. He assigned his patents to Railway Transports, Inc., a corporation in which he is one of 700 shareholders. The extent of his control of this corporation was not disclosed. Railway Transports, Inc. gave Seatrain an exclusive license under the patents, for which Seatrain pays as royalty the sum of approximately $50,000 per annum. The patents expire in 1944.

Hoboken and Seatrain entered into a contract dated November 21, 1932 (subsequent to the purchase of Hoboken's stock by Seatrain, although negotiations had been commenced prior to the purchase) which provided, in respect to freight transported by Hoboken and consigned for delivery to Seatrain, that delivery should be considered to be completed by Hoboken when the cars had been placed upon the cradle. Under the contract Seatrain had the right, upon its request, to have Hoboken place the cars at some

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either 5 or 10%, depending upon the commodities transported. See pages 37-39, testimony before the Commission, and Exhibit 2.

On car-load shipments loaded or unloaded by the shipper or consignee at their expense, the divisional allowance to Hoboken prior to *Ex Parte 123*, was 60¢ per ton, and subsequent to *Ex Parte 123*, either 63¢ or 66¢ per ton. See the same pages and the same Exhibit.

No loading or unloading of Seatrain freight being necessary to place or receive it at shipside, the trunk line railroads paid Hoboken on such freight a divisional allowance of 60¢ a ton prior to March 28, 1938 and 63¢ or 66¢ a ton after that date.

convenient point near the cradle, and Seatrain itself was then to place the cars on the cradle as Hoboken's agent. By other provisions of the contract Hoboken authorized Seatrain, as its agent, to take the cars from the cradle. The contract provided also that Hoboken would pay Seatrain 40¢ per ton of freight (other than coal) loaded into, or discharged from, the Seatrain ships in cars.

The 63¢ or 66¢ allowances (See Exhibit 36) represent an increase of 215 and 230 percent respectively over 20¢ per ton allowance in effect prior to July 1, 1918. If Hoboken's original divisional allowance of 20¢ had been increased in accordance with the general rate increases and reductions authorized by the Commission, its present allowances would be 38, 40 or 42 cents, varying as to commodities and territorial application of the rates. Prior to *Ex Parte 123* a compromise settlement was reached with the trunk line, establishing Hoboken's division at 60¢ per ton.

[fol. 148] By a later contract between Hoboken and Seatrain, dated February 24, 1937, effective as of March 1, 1937, it was provided that Hoboken would pay Seatrain 73¢ per ton (subject to possible revisions because of increases or decreases in the scale of longshoremen's wages) on all freight interchanged between them shipped on lighterage-free rates, and that Hoboken would pay Seatrain nothing on freight shipped on non-lighterage-free rates. Under this contract, Seatrain does not move the cars to or from the cradle. This service is performed by Hoboken.

The justification asserted by Hoboken for the sums paid by it to Seatrain is that, as the Seatrain appliances make it unnecessary to load or unload freight, the trunk line railroads are relieved of the expense of 75¢ per ton for which they ordinarily reimburse Hoboken when freight is moved under lighterage-free rates to or from water carriers other than Seatrain. Hoboken claims that since the trunk line carriers get these advantages by reason of Hoboken's contract with Seatrain, the savings effected should accrue to Hoboken and not to the trunk line carriers.

Under the contract of 1937, Seatrain charges Hoboken 73¢ for the Seatrain devices when used on lighterage-free freight. This would leave Hoboken 2¢ out of the 75¢ which Hoboken alleges it should receive under a new division of the $7.00 through-rate. If Hoboken's contentions were to

prevail, it would be able to operate at a profit. Otherwise, Hoboken will operate (as it has in the past) at a loss. The Commission indicated, however, that if Hoboken had not made the 73¢ payment it would have operated at a profit, averaging the years 1936 and 1937.

Part of the Commission's report is devoted to a discussion of the various elements which compose Hoboken's necessary operating expenses and its income. Seatrain leases the Seatrain pier and slip from Hoboken. The rental is based on Hoboken's expenditures. These include rent, taxes, insurance, depreciation, repairs, maintenance and dredging, plus an estimated return of 6% on Hoboken's in-
[fol. 149] vestment in the property. The crane which handles the cradles also is leased by Seatrain from Hoboken. Its original cost was about $85,000. The rental for all of the foregoing for the year beginning March 1, 1937, the effective date of the later contract was about $33,000.

It appears from the Commission's report that Hoboken paid Seatrain $110,000 in 1936, pursuant to the provisions of the 1932 contract; that in 1937 Hoboken paid Seatrain approximately $100,000. The cars that moved between Hoboken and Seatrain under lighterage-free rates were about 50% of all the cars moving between Seatrain and Hoboken. It follows that Hoboken paid Seatrain nothing for about 50% of the cars, viz., those that moved under non-lighterage-free rates.

The Commission concludes that the record before it warrants the finding that the former division of 60¢ and the present divisions of 63¢ and 66¢ a ton on lighterage-free freight are sufficient to cover the cost of the services performed by Hoboken and also constitutes a reasonable return on the property owned or used by Hoboken in performing such service. The Commission goes on to say, and we think correctly, that the service that the railroads hold themselves out to perform under the lighterage-free rates includes the unloading of inbound cars and the placing of the lading within reach of the ship's tackle and a corresponding but reverse service in connection with outbound freight. Placing the cars upon the cradle or removing them there, from satisfied all those requirements.

The Commission dismissed the complaint holding that the 75¢ charge was not properly a transportation charge and

that it could not be justified as a legitimate factor contributing to the efficiency of Hoboken's operation.[3]

[fol. 150] Hoboken has appealed to this court alleging that the order of the Commission was based upon errors in law in disregarding the contract between Hoboken and Seatrain, that the findings of the Commission are not supported by evidence, and that the order results in a confiscation of Hoboken's property without due process of law.

We have jurisdiction to review the order of the Commission. The Commission's determination upon matters of fact are binding, but the court may set aside the order if the parties were not accorded a fair and complete hearing, or if the findings of the Commission are not supported by evidence, or if the rate established by the Commission results in a deprivation of property without due process of law. *Interstate Commerce Commission* v. *Union Pacific R. R. Co.*, 222 U. S. 541, 547; *Florida East Coast Ry. Co.* v. *United States*, 234 U. S. 167; *St. Joseph Stockyards Co.* v. *United States*, 298 U. S. 38, 51.[4] There is here no contention that the proceedings before the Commission were not fair and adequate in every way.

Admittedly the Commission, as the trier of fact must determine the point at which the transportation service of the railroad is complete and, if the Commission's finding in this respect is supported by substantial evidence, the parties and this court are bound upon it. The question of where transportation by rail ends is an administrative question. *Atchison Ry.* v. *United States*, 295 U. S. 193, 201; *United States* v. *American Sheet and Tin Plate Company*, 301 U. S. 402; *United States* v. *Pan American Petroleum Corporation*, 304 U. S. 156. Even though we might reach a different conclusion, if there is evidence to support the Commission's findings, its order must be sustained. *New England Divi-*

[3] That the Commission dismissed the complaint instead of entering a positive order is immaterial. The effect of the action is to establish the current practice as the approved division. Rochester Telephone Corp. v. United States, 307 U. S. 125; Alton R. Co. v. United States, 287 U. S. 229; B. & O. R. Co. v. United States, 288 U. S. 349, 358.

[4] But see the concurring opinion of Mr. Justice Brandeis asserting the finality of administrative findings notwithstanding questions of constitutionality. 298 U. S. 38, 73.

sions Case, 261 U. S. 184, 204; *Seaboard Airline Ry. Co.* v. [fol. 151] *United States*, 254 U. S. 57, 62. The finding by the Commission that rail transportation ends at the cradle when Hoboken has put the car consigned for Seatrain upon it and begins at the cradle when the movement is reversed is fully supported by the evidence. The contract of November 21, 1932, between Hoboken and Seatrain expressly so provided, and the contract of February 24, 1937, now in force between Hoboken and Seatrain, makes no substantial change in this respect although Hoboken makes Seatrain its agent to put the cars upon and take them off the cradle. Since, as the Commission determined, transportation ends at the cradle, Hoboken completes its obligation under the lighterage-free tariff when it delivers the cars to the cradle. The Commission, therefore, held that the payments by Hoboken to Seatrain do not constitute a legitimate transportation cost. Upon this finding, supported by evidence, its judgment is final. United States v. Pan American Petroleum Corporation, 304 U. S. 156.

In its report the Commission found that, "While, therefore, the payments are not made for any service which the rail lines perform under the lighterage-free rate, there is a remaining question whether such payments may be justified, in any way and to any extent as compensation properly payable to Seatrain for the savings which it has accomplished for the rail lines by its new method of transfer. The new method of transfer puts the connecting rail lines to less expense under the lighterage-free rates than the old method. It may be argued, therefore, that they would be justified in making any payments that might be necessary for the purpose of inducing the establishment of the new method of transfer provided they were left with a net saving. There is no evidence, however, that payments were or are necessary for this purpose. The contract between Seatrain and complainant, to which defendant rail lines are not parties, is not evidence to this effect, in view of the control which Seatrain exercises over complainant. No such payments have, so far as the record shows, been exacted or obtained by Seatrain from an independent rail [fol. 152] connection. There is ample reason to conclude, also, that the improved method of transfer is only an incident to the Seatrain plan of transportation, and that this plan has sufficient advantages to impel its use and promo-

tion by Seatrain regardless of any contributory payments from rail connections."

Admittedly, the contract between Seatrain and Hoboken should be examined carefully because of the corporate relationship. Lindelheimer v. Illinois Telephone Co., 292 U. S. 151, 156; Pittsburgh & W. V. Ry. Co. v. United States, 41 F. (2d) 806, 811. Also Seatrain does not exact payments from the railroads with which it interconnects at Havana and New Orleans. Hoboken asserts, however, that if Seatrain were to demand such payments from the United Railways of Havana, the latter's revenue from traffic with Seatrain would be less than that received from its traffic with break-bulk carriers. The location of the terminal at Belle Chasse saves Seatrain approximately 17 miles of travel in each direction and this, according to Hoboken, is sufficient to compensate for lack of contributory payments. The Commission did not determine the validity of the contract, but dismissed the entire question of the contract payments on the theory that Hoboken would receive the same interconnecting facilities irrespective of the payments.

However, the issue at bar is not predicated solely upon Hoboken's legitimate costs. The entire inquiry should be directed to securing "a fair and equitable division" of the rates. Conceding *arguendo* that the contract between Hoboken and Seatrain does not constitute a valid obligation to be considered in determining Hoboken's costs, that does not necessarily mean that there is no obligation upon Hoboken to make some payment for the interconnection which saves Hoboken the labor and costs of loading and unloading freight. The Commission should have determined the *quantum meruit* of the relationship. It is possible that there was no service or relationship of value. Even such a finding would not necessarily result in a dismissal of the com- [fol. 153] plaint. If there is a windfall in the case at bar by reason of Hoboken's right under its contract to use the Seatrain devices to fulfill its obligations of carriage, the Commission should determine that fact and also an equitable basis for division of the windfall between Hoboken and the trunk line carriers. This the Commission has failed to do by appropriate findings.

Whereas the burden of proof in attacking an established rate rests upon the complainant, Interstate Commerce Commission v. Nashville C. & St. L. Ry. Co., 120 Fed. 934, the

instant case was brought to determine a new division since previous agreements did not cover the novel facts of the Seatrain method of interchange.

The agreement which Hoboken had had with the trunk line carriers since 1920 provides that the divisions shall be as follows:

"Carloads loaded or unloaded by H.M. R.R. (Hoboken) or at its expense	$1.35 per ton
"Carloads loaded or unloaded by shipper or consignee at their expense	$ .60 per ton

These rates are by their own terms inapplicable to the Seatrain method of interchange in which the loading and unloading is eliminated.

The act directs the Commission to inquire into the facts and to prescribe just and equitable divisions and not unjustly to prefer or prejudice any party. There was no evidence presented to show that the granting of the entire saving of the loading or unloading of the cars was not an undue emolument for the trunk line railroads. The Commission's remark that the defendant's rates were based on average costs scarcely constitutes a finding as prescribed by the Act. The Commission merely stated in conclusion that such divisions are not unduly preferential. Where there is [fol. 154] a lack of basic findings, the court need not examine the evidence and spell out conclusions of fact, Florida v. United States, 282 U. S. 194, 215. Likewise, where the evidence does not support the findings, the holding of the Commission should not be sustained: Colorado v. United States, 271 U. S. 153; New England Divisions Case, 261 U. S. 184, 204. Our holding on this point obviates the necessity for inquiring into the due process issue raised by the plaintiff.

If the Commission should find that the Seatrain devices are an efficient aid to railroad transportation, the Commission should evaluate the worth of the devices to Hoboken and a legitimate payment therefor; in short, including in the base upon which Hoboken's fair return is calculated, the

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6. Pursuant to *Ex Parte 123*, these divisions have been increased slightly. However, these figures were used by the parties, and, for convenience, we have followed their practice.

true value of the Seatrain devices. In effect, the Commission, as a representative of the public interest and the public would set the value of the contract and the Seatrain devices to Hoboken. It should likewise determine a division of the through rate which would not be unduly prejudicial or preferential to any of the parties.

The Order of the Commission of July 24, 1939 will be set aside and the Commission is directed to reinstate the proceedings before it and to make findings of fact as indicated by this opinion and to issue and enter a report in the proceedings and to make such an order or orders therein as may be required by law.

Findings of fact and conclusions of law are filed herein in accordance with the provisions of Rule 52.

John Biggs, Jr., U. S. Circuit Judge; Guy L. Fake, U. S. District Judge; William F. Smith, U. S. District Judge.

November 24th, 1942.

[fol. 155] In the District Court of the United States

Civil Action No. 1100

Hoboken Manufacturers' Railroad Company, Plaintiff,

v.

United States and Interstate Commerce Commission et al., Defendants.

Findings of Fact and Conclusions of Law—Nov. 24, 1942

1. On December 31st, 1936, there was filed with the Interstate Commerce Commission a complaint, Docket No. 27630, Hoboken Manufacturers' Railroad Company v. The Akron, Canton & Youngstown Railway Company, et al., in which complainant, Hoboken Manufacturers' Railroad Company, alleged that the divisions it was receiving out of joint class and commodity rates on traffic interchanged by it with Seatrain Lines were unjust and unreasonable, in violation of the Interstate Commerce Act, and wherein it sought an increase in such divisions. The complaint prayed that the Commission, after full hearing, enter an order requiring the Eastern Trunk Line defendants to cease and desist from violating the said Act. Numerous rail carriers in Central

Freight Association, Trunk Line, and New England Territories, as well as various southern and southwestern railroads, were named as defendants in the Commission proceedings.

2. Extensive hearings were conducted by an examiner of the Commission, at which all interested parties appeared and introduced pertinent testimony. An examiner's proposed report issued, to which exceptions were filed by Hoboken, and a reply was filed by the rail defendants. The proceeding was also fully briefed and orally argued before the [fol. 156] Interstate Commerce Commission.

3. Thereafter a report of the Commission, dated July 24, 1939, and reported in 234 I. C. C. 114, was served upon all interested parties, which report is referred to and made a part of the petition in this case as Exhibit B.

4. The plaintiff, Hoboken Manufacturers' Railroad Company (hereinafter referred to as Hoboken), a corporation organized and existing under the laws of the State of New Jersey, is a short switching line railroad operating along the waterfront of Hoboken, New Jersey, serving numerous steamship piers, including the piers of ordinary cargo or so-called break-bulk steamships and also the pier of Seatrain Lines, Inc., (hereinafter referred as to Seatrain). At its northern end it has track connections with the Erie Railroad, by means of which it interchanges cars containing freight with the Erie Railroad and through it with other trunk line railroads, including intervening trunk lines.

5. The intervening defendants (hereinafter referred to as the trunk lines) are railroad corporations existing under the laws of various states and operating trunk lines of railroad between the New York waterfront and points in the Eastern part of the United States, and either individually or with other railroads with which they connect they perform railroad transportation of freight between New York Harbor, including Hoboken, and points of origin and destination in the Eastern Part of the United States. They publish and keep on file with the Interstate Commerce Commission tariffs naming rates for such railroad transportation to and from New York Harbor, including the Hoboken waterfront and steamship piers reached by the switching line of plaintiff.

6. The railroad freight rates to and from New York Harbor, including the Hoboken waterfront, are of two sorts:

[fol. 157] (a) So-called local rates, under which as to carload freight the railroads' terminal obligation and undertaking to the shippers is merely to place cars at convenient points for loading or unloading, the operation of loading and unloading being performed by the shippers or at their expense.

(b) So-called shipside or lighterage-free rates, under which it is the obligation and undertaking of the railroads to the shippers to receive freight discharged from a ship on the pier or a lighter alongside the ship, furnish a car for the rail movement, move the freight to the car, and load the freight into the car, providing dunnage or bracing therefor where necessary; and in the case of freight moving in the reverse direction to switch or lighter the freight to the steamship pier, doing everything necessary to deliver the freight to the vessel in such a way as to obligate the vessel to receive and transport it; this, by custom in the case of the ordinary type of breakbulk ship, including unloading the freight from the car and handling the freight to shipside where it can be conveniently reached by whatever tackle is used to load the ship.

This suit involves only these so-called shipside or lighterage-free rates and the division of these rates between plaintiff and the trunk lines.

7. As a switching railroad Hoboken performs for the trunk lines the terminal services and obligations devolving [fol. 158] upon them under these rates in connection with freight received from or to be delivered to steamships docking at piers served by Hoboken. The trunk line railroads collect the freight charges on such freight in accordance with their tariffs and Hoboken receives its compensation for its terminal services in the shape of so-called divisions or allowances paid to it by the trunk line railroads out of the freight charges collected by the latter.

8. Since 1920 there has been an agreement between Hoboken and the trunk lines providing that Hoboken's divisions should be as follows:

"Carloads loaded or unloaded by H.M. R.R. (Hoboken) or at its expense $1.35 per ton

"Carload loaded or unloaded by shipper or consignee or at their expense $ .60 per ton

(These divisions have been slightly changed in connection with percentage increases in the rates themselves but for convenience the parties used the foregoing and they are used therein.)

The division of 60¢ a ton represents Hoboken's division of so-called local rates described in (a) of paragraph 6 and the division of $1.35 represents its division of shipside or lighterage-free rates described in (b) of paragraph 6, where in interchanging with ships it loads the freight into or unloads it from cars at its expense.

The division of 60¢ reimburses Hoboken for the expense of switching or wheeling the cars. The division of $1.35 is made up of this 60¢, plus 75¢, the approximate or average cost to Hoboken of loading or unloading freight into or from cars and the handling incident thereto.

Ordinarily, Hoboken performs the unloading from and loading into cars and handling across steamship piers, not with labor hired directly by it but by making a contract with [fol. 159] the steamship company concerned to do the work with steamship stevedore labor, Hoboken paying the steamship company approximately 75¢ a ton.

9. The proceeding before the Commission related to the division to be received out of shipside or lighterage-free rates in connection with freight interchanged with the vessels of Seatrain Lines, Inc. and arose because the rates include compensation to the trunk lines for loading freight into or unloading freight from cars in interchanging with vessels, but the necessity for such loading or unloading is eliminated by Seatrain's type of ship and its patented crane and devices and because the terms of the agreement above quoted are not applicable to freight interchanged with Seatrain since cars are neither loaded or unloaded by Hoboken or at its expense nor are they loaded or unloaded by the shipper or consignee at their expense.

10. Seatrain Lines, Inc. is a water carrier operating a new type of ocean-going steamship vessel designed to save the labor and expense of loading, unloading, handling and furnishing cars ordinarily devolving upon the railroads at the ports in connection with freight transported by them under their so-called shipside or lighterage-free rates in

interchanging such freight with steamships, this saving to be accomplished by a special type ship and the use of patented inventions, by which the freight is transferred between rail and vessel in the cars used for rail movement without breaking bulk or handling the freight itself. The transfer is accomplished by means of a large crane, located on the pier alongside which the vessel docks, a car being transferred by the crane between the hold of the vessel and the pier upon a so-called cradle, which fits into a well upon the pier, so that the car can be pulled off or shoved on to the cradle by a small locomotive, the cradle also fitting into the hatch of the ship.

11. In 1932, Hoboken asked its trunk line connections to [fol. 160] pay it a division or allowance on Seatrain freight of $1.00 a ton, made up of 60¢ to reimburse it for its switching cost and 40¢ to reimburse it for its payment to Seatrain. The trunk line railroads refused and paid it only 60¢ a ton on all Seatrain freight. When the contract was changed in 1937, Hoboken asked a division of $1.35 per ton only on freight moving on lighterage-free or shipside rates (60¢ plus 75¢), but the trunk line railroads again refused and persisted in paying it only 60¢ per ton on all freight received from or delivered to Seatrain's vessels, although out of the same rates they paid Hoboken $1.35 on freight interchanged with the Holland-America Line, Pan-Atlantic Steamship Co. and other steamship lines.

12. Thereupon plaintiff filed its complaint with the Interstate Commerce Commission asking the Commission, under Section 15 of the Interstate Commerce Act, to prescribe the just, reasonable and equitable divisions to be received by it and by the trunk lines, respectively, out of the ship-side or lighterage-free rates to and from the Hoboken waterfront on freight interchanged with Seatrain. The trunk line railroads were made defendants in the proceeding.

13. Hearings were held before an Examiner of the Interstate Commerce Commission on this complaint. The Commission's Examiner submitted a proposed report, to which exceptions were filed, after which there was oral argument before the Commission.

14. Under date of July 24, 1939, the Commission rendered its decision, in which it found that the division of 60¢ (as subsequently changed by percentage increases) paid by the trunk lines to Hoboken on Seatrain traffic was not unjust, unreasonably low, inequitable, or unduly prejudicial to Hoboken. Based thereon, the Commission entered its order of the same date dismissing the complaint.

[fol. 161] 15. Thereafter Hoboken filed with the Commission a petition for reconsideration, which the Commission by its order of April 1, 1940 denied.

16. In its decision the Commission found that Hoboken as a switching line was entitled to receive divisions which would reimburse it for its full costs of handling the freight interchanged with Seatrain, including a fair return on the value of the property, but it concluded that 60¢ (with the subsequent percentage increases) represented such full cost and that the contract payments made to Seatrain were not a part of Hoboken's costs of handling the traffic.

17. As a further ground for its decision, the Commission found that the payments might be justified as a part of Hoboken's expense if they were "necessary for the purpose of inducing the establishment of the new method of transfer", but the Commission concluded that there was "no evidence", however, that payments were or are necessary for this purpose" and based this conclusion upon a finding that,

> "The contract between Seatrain and complainant, to which defendant rail lines are not parties, is not evidence to this effect, in view of the control which Seatrain exercises over complainant."

and the commission further found;

> "There is ample reason to conclude • • • that this plan has sufficient advantages to impel its use and promotion by Seatrain regardless of any contributory payments from rail connections."

18. Because of the corporate relation between Seatrain and Hoboken, Hoboken asked the Commission to consider and determine whether the payment of 73¢ (formerly 40¢) provided by the contract represented reasonable compen-

sation for the benefits derived by Hoboken to be included in the costs for which Hoboken was entitled to reimbursement from the trunk lines and if 73¢ was not reasonable, then to determine what would be reasonable and fair com-
[fol. 162] pensation in the light of efficient management and operation of Hoboken's properties. The Commission failed to make any finding on this question, finding, for the reasons above indicated, that no payment whatever to Seatrain could properly be included in Hoboken's costs for which it should be reimbursed by the divisions to be received from the trunk lines.

Conclusions of Law

1. The Commission's order dismissing Hoboken's complaint, although in form a negative order, has the effect of requiring Hoboken to continue to perform its terminal service as a switching carrier for the trunk lines in transferring freight between the trunk lines and Seatrain for 60¢ per ton (with the subsequent percentage increases) and is therefore, in effect, an affirmative order which is subject to review in this proceeding. Alton R. Co. v. United States, 287 U. S. 229. Moreover, under Rochester Telephone Corp. v. United States, 307 U. S. 125, this court has jurisdiction regardless of the form of the Commission's order.

2. This court may not substitute its judgment for that of the Commission as to what would be reasonable divisions to be received by Hoboken or as to what would be reasonable compensation to be paid by Hoboken to Seatrain and to be included in Hoboken's costs, for which it should be reimbursed by the divisions paid to it by the trunk lines. But if the Commission in rendering its decision committed errors of law or disregarded or refused to receive evidence because of an erroneous belief that the evidence was not material or if the Commission failed to make a finding required of it, without which a proper determination could not have been made by it, this court may
[fol. 163] enjoin and set aside the Commission's order dismissing the complaint and may direct the Commission to reconsider its decision and take further proceedings in the light of the conclusions herein stated.

3. The Commission erred as a matter of law in not making a finding as to whether or not reasonable payment to

Seatrain for the benefits derived by Hoboken and through Hoboken by the trunk lines from the interchange with Seatrain and the use by Seatrain of its patented devices in connection therewith, is part of Hoboken's costs of operation under efficient operation in the transfer of freight between the trunk lines and Seatrain, when on such freight the trunk lines charge their lighterage-free or shipside rates, and have the obligations and undertakings for which they are compensated by such rates.

4. The Commission erred as a matter of law and failed to carry out the duty imposed upon it by the statute, to give due consideration "to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property" in that the Commission failed to consider and make a finding as to whether relationship between Hoboken and Seatrain was in the interest of the efficient operation of Hoboken as a rail carrier, and failed to consider and make a finding as to what payment by Hoboken to Seatrain would be reasonable compensation, consistent with such efficient operation, for the benefits derived by Hoboken and the trunk lines from the interchange arrangement with Seatrain, to be included in Hoboken's costs for which it is entitled to be reimbursed by the divisions paid to Hoboken by the trunk lines.

5. The Commission erred as a matter of law and failed to carry out the duty imposed by the statute of determining whether or not the divisions were unjust, unreasonable, inequitable or "unduly preferential or prejudicial as between [fol. 164] the carriers * * *" in that the Commission failed to direct its attention to the problem of the equitable division of the 75¢ saving occasioned by the interconnection with Seatrain.

6. The order of the Commission dismissing Hoboken's complaint should be set aside and annulled and the Commission should be directed (a) to reconsider the decision; (b) to determine whether or not the relationship between Hoboken and Seatrain is of value; (c) if the Commission should find that the relationship is of value, to determine the amount of that value to be allowed in establishing Hoboken's legitimate costs; (d) to make a finding as to whether or not the allowance to the trunk line carriers of

the entire saving of 75¢ per ton occasioned by the use of the Seatrain intercomection is "unduly preferential or prejudicial as between the carriers"; and (c) if the Commission should find that the allowance of the entire 75¢ to the trunk line carriers is unduly preferential or prejudicial, to determine an equitable division of the 75¢.

John Biggs, Jr., U. S. Circuit Judge. Guy L. Fake, U. S. District Judge. William F. Smith, U. S. District Judge.

November 24th, 1942.

[fol. 165] LETTER FROM COURT TO COUNSEL

UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY

Chambers of Judge Fake

Newark, N. J.

January 8th, 1943.

Parker McCollester, Esq., c/o Lord, Day & Lord, 25 Broadway, New York, New York.

E. M. Reidy, Esq., Ass't Chief Counsel, Interstate Commerce Commission, Washington, D. C.

Charles W. Broadhurst, Esq., 1 Exchange Place, Jersey City, New Jersey.

Re: Hoboken Manufacturers' Railroad Co. vs. United States and Interstate Commerce Commission

Civil Action #1100

GENTLEMEN:

Herewith enclosed is copy of the Final Decree which has this day been filed with the clerk.

Please note the language of the final decree differs somewhat from the one submitted by counsel.

Yours truly, Guy L. Fake, Judge.

Enc.

[fol. 166] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY

Civil Action 1100

HOBOKEN MANUFACTURERS RAILROAD COMPANY, Plaintiff,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., Defendants

FINAL DECREE—Dated December 30, 1942

This cause coming on to be heard and arguments and briefs of counsel for all parties to the proceedings having been heard and considered, and the Court having been fully advised in the premises and having filed its opinion, findings of fact and conclusions of law, it is

Ordered that the application of the petitioner herein for an order declaring null and void and setting aside, annulling and suspending the order of the Interstate Commerce Commission issued on July 24, 1939, be and the same hereby is granted, and the said order is hereby set aside and annulled, and it is

Further Ordered that the Interstate Commerce Commission reinstate the proceedings before it, reconsider its decision, make findings of fact as indicated in the opinion of this Court dated November 24, 1942, make conclusions of law, and issue and enter a report in the proceedings and make such order or orders as may be required by law.

Dated: December 30, 1942.

John Biggs, Jr., United States Circuit Judge. Guy L. Fake, United States District Judge. William F. Smith, United States District Judge.

[fol. 167] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL—Filed March 8, 1943

The Interstate Commerce Commission and the Baltimore and Ohio Railroad Company, et al., defendants in the above-entitled cause, feeling themselves aggrieved by the final decree of the District Court of the United States for the

District of New Jersey, entered in said court on January 8, 1943, pray an appeal from said decree to the Supreme Court of the United States.

The particulars wherein they consider the decree erroneous are set forth in the Assignment of Errors accompanying this petition and to which reference is hereby made.

[fols. 168-171] Said defendants pray that a transcript of the record, proceedings and papers on which said decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

Daniel W. Knowlton, Chief Counsel; E. M. Reidy, Assistant Chief Counsel, for the Interstate Commerce Commission. Collins & Corbin, Attorneys of Record and Resident Counsel designated under Rule 3 for the Baltimore and Ohio Railroad Company, et al., intervening railroad defendants, by Chas. W. Broadhurst, a Member of said firm and one of the Attorneys of Record doing business under said firm name. Address: 1 Exchange Place, Jersey City, N. J.

Willis T. Pierson, Thomas P. Healy, Francis R. Cross, Joseph F. Eshelman, of Counsel for intervening railroad defendants.

[fol. 172] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS—Filed March 8, 1943

Now come the Interstate Commerce Commission and the Baltimore and Ohio Railroad Company, et al., defendants in the above-entitled cause, by their respective counsel and in connection with their appeal, file the following assignment of errors upon which they will rely in the prosecution of their appeal to the Supreme Court of the United States from the final decree of this court entered January 8, 1943.

The District Court erred:

1. In not dismissing the petition of plaintiff herein.

2. In setting aside the Commission's order of July 24, 1939, involved in this case.

3. In substituting its judgment for that of the Commission upon an administrative matter.

4. In directing the Commission to reinstate the proceed- [fol. 173] ings before it, to reconsider its decision, to make findings of fact as indicated in the opinion of the Court, and to issue and enter a report in the proceedings and make such an order or orders therein as may be required by law.

5. In finding and holding that the Interstate Commerce Commission failed to make all essential findings.

6. In holding that the Commission did not determine a division of the rates which would not be unduly prejudicial or preferential to any of the parties.

7. In concluding as a matter of law that the Commission did not carry out the duty imposed upon it by statute in a divisions case.

8. In not holding that the Commission's findings are supported by substantial evidence.

9. In entering the findings of fact and conclusions of law which it made in this case.

10. In inconsistently granting an injunction setting aside the Commission's order of July 24, 1939, involved in this case, after holding (a) that the railroad-appellants perform the service which they hold themselves out under the lighterage-free rates to perform when they place the cars at the cradle or receive them from the cradle; (b) that the proceedings before the Commission were fair and adequate in every way; (c) that the question of where transportation ends is an administrative question; (d) and that the Commission's finding that the payments made by Hoboken to Seatrain do not constitute a legitimate rail transportation cost, being supported by evidence, is final.

11. In finding and holding that the Interstate Commerce Commission failed to give due consideration to the matters [fol. 174] specified in the statute (49 U. S. C. Sec. 15 (6)) and failed to consider, find, and determine what divisions of the railroads' lighterage-free rates were and would be

just, reasonable, and equitable as between the carriers parties thereto.

12. In holding that the Commission did not make a finding "as to whether or not reasonable payment to Seatrain for the benefits derived by Hoboken and through Hoboken by the trunk lines from the interchange with Seatrain and the use by Seatrain of its patented devices in connection therewith, is part of Hoboken's costs of operation under efficient operation in the transfer of freight between the trunk lines and Seatrain."

13. In concluding and holding that if the Commission should find that the Seatrain devices are an efficient aid to railroad transportation, the Commission should evaluate the worth of the devices to Hoboken and a legitimate payment therefor, including in the base upon which Hoboken's fair return is calculated the true value of the Seatrain devices.

14. In finding and concluding that as a further ground for its decision "the Commission found that the payments might be justified as a part of Hoboken's expense if they were 'necessary for the purpose of inducing the establishment of the new method of transfer', * * *".

15. In finding that Hoboken makes Seatrain its agent to put the cars upon and take them off the cradle.

16. In holding that the Commission erred in failing to make an equitable division of "the 75¢ saving occasioned by the interconnection with Seatrain."

17. In finding and holding that the Commission failed to find and "determine what would be reasonable and fair compensation in the light of efficient management and [fol. 175] operation of Hoboken's properties."

18. In concluding that Hoboken has the right under its contract with Seatrain to use the Seatrain devices "to fulfill its obligations of carriage," thereby substituting its judgment for that of the Commission as to the scope of Hoboken's said obligations.

19. In holding that there was no evidence presented to the Commission "to show that the granting of the entire

saving of the loading or unloading of the cars was not an undue emolument for the trunk line railroads."

Wherefore, defendants pray that the said decree be reversed.

Daniel W. Knowlton, Chief Counsel; E. M. Reidy, Assistant Chief Counsel, for the Interstate Commerce Commission. Collins & Corbin, Attorneys of Record and Resident Counsel designated under Rule 3 for the Baltimore and Ohio Railroad Company, et al., intervening railroad defendants, by Chas. W. Broadhurst, a Member of said firm and one of the Attorneys of Record doing business under said firm name. Address: 1 Exchange Place, Jersey City, N. J.

Willis T. Pierson, Thomas P. Healy, Francis R. Cross, Joseph F. Eshelman, of Counsel, for intervening railroad defendants.

[fol. 176] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—March 8, 1943

In the above-entitled cause, the Interstate Commerce Commission and The Baltimore and Ohio Railroad Company, et al., defendants, having made and filed a petition praying an appeal to the Supreme Court of the United States from the final decree of this court in this cause entered on January 8, 1943, and having also made and filed an assignment of errors, and a statement of jurisdiction, and having in all respects conformed to the statutes and rules of Court in such case made and provided, it is

Ordered and Decreed that the appeal be, and the same is hereby, allowed as prayed for.

Dated March 8, 1943.

Guy L. Fake, United States District Judge.

[fol. 177] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

NOTICE OF APPEAL TO ATTORNEY GENERAL OF NEW JERSEY

To:

The Attorney General for the State of New Jersey:

You are hereby notified that the District Court of the United States for the District of New Jersey, on March 8, 1943, filed and entered an order allowing an appeal by the Interstate Commerce Commission, The Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The Pennsylvania Railroad Company, The Erie Railroad Company, et al., to the Supreme Court of the United States from a decree filed and entered on the 8th day of January, 1943, in the above-entitled cause, and that the citation signed by such Court on March 8, 1943, in connection [fol. 178] with the order allowing such appeal, is made returnable within 40 days from the date of the signing of such citation.

Attached hereto are copies of each of the following documents: the citation referred to above, the petition for and the order allowing said appeal, defendants' jurisdictional statement pursuant to Rule 12 of the revised Rules of the Supreme Court of the United States, and the statement required to be served on appellees by said Rule 12.

This notice is given to you pursuant to the provisions of U. S. Code, Title 28, sec. 47a, enacted March 3, 1911, c. 231, sec. 210, 35 Stat. 1150, as amended by the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 219, 220.

Dated March 8, 1943.

Daniel W. Knowlton, Chief Counsel; E. M. Reidy, Assistant Chief Counsel For the Interstate Commerce Commission; Collins & Corbin, Attorneys of Record and Resident Counsel designated under Rule 3 for the Baltimore and Ohio Railroad Company, et al., intervening railroad defendants; By: Chas. W. Broadhurst, A Member of said firm and one of the Attorneys of Record doing business under said firm name. Address: 1 Exchange Place, Jersey City, N. J.

[fol. 179] Welles T. Pierson, Thomas P. Healy, Francis F. Cross, Joseph F. Eshelman, Of Counsel for intervening railroad defendants.

Received a copy of the foregoing notice this 9th day of March, 1943.

David T. Wilentz, For the Attorney General of the State of New Jersey.

[fol. 180] Cost Bond on Appeal for $250.00 approved. Omitted in printing.

[fols. 181-200] Citation in usual form showing service on John Drewen, omitted in printing.

[fol. 201] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

DEFENDANTS' (APPELLANTS') PRAECIPE FOR TRANSCRIPT OF RECORD—Filed March 8, 1943

To the Clerk of the Above-named Court:

You are hereby requested to prepare a transcript of the record in the above-entitled cause to be filed in the Supreme Court of the United States, pursuant to an appeal allowed therein, and to include in such transcript of record the following, to wit:

(1) Petition and Appendices A, B, C and D thereto, filed August 27, 1940;

(2) Answer of United States;

(3) Answer of Interstate Commerce Commission;

(4) Motion of The Baltimore and Ohio Railroad Company, et al., for leave to intervene as defendants;

[fol. 202] (5) Order of Court, permitting intervention of the Baltimore and Ohio Railroad Company, et al., as defendants;

(6) Answer of defendants in intervention, The Baltimore and Ohio Railroad Company, together with Exhibit I thereto attached;

(7) Testimony introduced before the Interstate Commerce Commission at hearings dated September 19, 20, 21, and October 20 and 21, 1938;

(8) All exhibits introduced at said hearings before the Interstate Commerce Commission;

(9) Order of June 19, 1941, concluding arguments and taking the cause under advisement;

(10) Oral argument before the Interstate Commerce Commission;

(11) Complaint filed with the Interstate Commerce Commission in Docket No. 28668 and introduced in evidence in District Court;

(12) Letter of Judge Fake to all counsel, dated December 23, 1941;

(13) Reply of Mr. Reidy to said letter, dated December 26, 1941;

(14) Letter of Mr. Pierson, dated January 2, 1942;

(15) Letter of Mr. McCollester to Judge Fake, dated January 10, 1942;

(16) Letter of Mr. Pierson to Judge Fake, dated January 14, 1942;

(17) Order of April 18, 1942, concluding reargument and taking the case under advisement;

(18) Plaintiffs' requested findings of fact and conclusions of law;

fol. 203] (19) Interstate Commerce Commission and other defendants' suggested findings of fact and conclusions of law;

(20) Findings of fact and conclusions of law entered by District Court;

(21) Final Decree and letter from Judge Fake, dated January 8, 1943;

(22) Petition for Appeal;

(23) Notice of Appeal and Acknowledgement of service;

(24) Assignments of error;

(25) Order allowing appeal;

(26) Notice to Attorney General of the State of New Jersey;

(27) Citation on appeal;

(28) Statement of jurisdiction of the Supreme Court of the United States;

(29) Praecipe for transcript of record and acknowledgment thereof, and

(30) All docket entries in their appropriate order.

Willis T. Pierson, Thomas P. Healy, Francis R. Cross, Joseph F. Eshelman, Of Counsel, for Intervening Railroad Defendants.

Daniel W. Knowlton, Chief Counsel; E. M. Reidy, Assistant Chief Counsel, for the Interstate Commerce Commission; Collins & Corbin, Attorneys of [fol. 204] Record and Resident Counsel Designated Under Rule 3 for the Baltimore & Ohio Railroad Company, et al., Intervening Railroad Defendants; Chas. W. Broadhurst, a Member of Said Firm and One of Attorneys of Record Doing Business Under Said Firm Name, Address: 1 Exchange Place, Jersey City, N. J.

Service of the foregoing praecipe for transcript of record and receipt of copy thereof are hereby acknowledged this 8th day of March, 1943.

John Drewen, For Hoboken Manufacturers Railroad.

[fol. 205] IN THE DISTRICT COURT OF THE UNITED STATES

[Title Omitted]

ORDER AS TO EXHIBITS—Filed March 22, 1943

In accordance with the provisions of defendants' praecipe for transcript of record on appeal of the above-entitled matter to the Supreme Court of the United States, and it appearing that the parties have consented thereto,

It Is hereby ordered, That the certified copies of (1) the transcript of the stenographer's notes of hearings held before the Interstate Commerce Commission September 19, 20 and 21, and October 20 and 21, 1938, at New York, N. Y., and of exhibits filed at said hearings in Docket No. 27630, *Hoboken Manufacturers' Railroad Company* v. *Akron, Canton & Youngstown Ry. Co., et al.*, introduced in evidence in [fol. 206] the District Court as Exhibit P-1; (2) of the oral argument before the Interstate Commerce Commission dated July 6, 1939, which was received in evidence in this case as Exhibit D-1, and (3) of the certified copy of the complaint filed with the Interstate Commerce Commission on May 22, 1941, in Docket No. 28668, *Seatrain Lines, Inc.*, v. *Akron, Canton & Youngstown Ry Co., et al.*, which was received in evidence by the District Court as Exhibit D-2, may all be forwarded to the Clerk of the United States Supreme Court as a part of the transcript of the record on appeal herein.

Dated this 22nd day of March, 1943.

Thomas F. Meaney, United States District Judge.

We consent to the entry of the above order by the Court.

E. M. Reidy, Assistant Chief Counsel, For Interstate Commerce Commission. Welles T. Pierson, Thomas P. Healy, Francis R. Cross, Joseph F. Eshelman, Of Counsel, For Intervening Railroad Defendants. Parker McAllister, Attorney for Plaintiff.

[fol. 207] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 208] Secretary's Certificate to following transcript omitted in printing.

[fol. 1] PLAINTIFF'S EXHIBIT 1

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 27630

HOBOKEN MANUFACTURERS' RAILROAD CO., Complainant

vs.

THE AKRON, CANTON AND YOUNGSTOWN RY. CO., ET AL., Defendants

Hotel New Yorker, New York City, New York, September 19, 1938, at 10:00 o'clock A. M., D. S. T.

Before: Examiner Hoy, Interstate Commerce Commission.

APPEARANCES:

Parker McCollester, (Lord, Day & Lord), 25 Broadway, New York City, appearing for the complainant.

W. T. Pierson, Midland Building, Cleveland, Ohio, appearing for Defendants in Official Territory.

J. F. Eshelman, 1740 Broad Street Station Building, Philadelphia, Pennsylvania, appearing for defendants in Official Territory.

T. P. Healy, 466 Lexington Avenue, New York City, appearing for defendants in Official Territory.

E. H. Burgess, New York City, New York, appearing for defendants in Official Territory.

E. A. Hodkinson, 143 Liberty Street, New York City, New [fol. 2] York, appearing for defendants in Official Territory.

P. F. Gault, Room 1422, 400 West Madison Street, Chicago, Illinois, appearing for Chicago and Northwestern Ry. Company, Chicago, St. Paul, Minneapolis and Omaha Railway Company, Chicago, Burlington and Quincy Railroad Company, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Chicago Great Western Railroad Company and Western Trunk Line, defendants generally.

T. P. Healy, 466 Lexington Avenue, New York City, appearing for New York Central System.

[fol. 3] COLLOQUY BETWEEN EXAMINER AND COUNSEL

Examiner Hoy: Gentlemen, the Interstate Commerce Commission has set for hearing at this time and place Docket No. 27630, Hoboken Manufacturers Railroad Company versus the A. C. & Y. Railway Company, et al.

Complainant alleges that the divisions of joint class and commodity rates accorded it by defendants on traffic interchanged with Seatrain Lines, Inc. at Hoboken, N. J. are unjust, unreasonable, inequitable, and unduly prejudicial to the complainant in violation of Paragraph 4, Section 1 of the Interstate Commerce Act.

Complainant seeks an order prescribing for the future just, reasonable, equitable and non-prejudicial and non-preferential divisions, and requiring an adjustment on the basis prescribed from the date of filing complaint on all traffic moving under rates prescribed by the Commission.

Does that satisfactorily state the issues in a brief way?

Mr. McCollester: Well, except for this, Mr. Examiner: The converse of what is stated there is also alleged in the complaint; namely, that we allege not only that the Hoboken Divisions are and for the future will be unreasonable, if less than those sought by the complainant, but also that the divisions accruing to the defendants will be unreasonably high, inequitable, and unfair, if greater than would [fol. 4] be left to them after the divisions sought by the complainant allowed to it.

Examiner Hoy: Well, I think that necessarily follows:

Mr. McCollester: I think it does, too, but I make that statement because the presentation of our case will be along those lines, both of those lines.

Mr. Eshelman: I was just going to ask another question regarding the issues at an appropriate time.

Examiner Hoy: Go ahead.

Mr. Eshelman: I was going to ask Mr. McCollester if complainant would, or chooses to indicate on the record the advice which I think was informally transmitted to the defendants, as to only Seatrain traffic being here involved.

Mr. McCollester: That is correct. This complaint involves only the divisions as between the complainant and the defendants of the rates on freight interchanged with Seatrain Lines.

Examiner Hoy: Well, that is the way I read the complaint.

Mr. McCollester: That is the way the Examiner stated it.

Examiner Hoy: I do not know anything about any informal advice, but that is the way I read the complaint: that it only involves traffic interchanged with Seatrain.

Mr. Gault: That is the way I read it, too, and I am glad [fol. 5] to have it confirmed.

Examiner Hoy: That is the way I read it at the beginning of the hearing.

Mr. Echelman: I think I missed hearing that word. One of the things I wanted to ask: this would be true—that it relates to rates, divisions of rates applied to traffic via the Seatrain, whether those rates be locals to or from the ports, or rail proportionals to or from the ports, or whether in any instance they be joint rates in which the rail lines and Seatrain both participated.

Would that be correct?

Mr. McCollester: Well, on that, Mr. Examiner, I was going to state, when we begin our presentation, that we hope that the basis fixed by the Commission will afford a basis for dividing those rates, if and when established.

No such rates are now in existence, however, and therefore, as I see it, it is impossible for the Commission to divide them.

That is, there are no such rates, with few exceptions. There are some, as the Commission knows, from the through route case.

Mr. Eshelman: That is on certain northbound rates?

Mr. McCollester: Northbound rates.

Mr. Eshelman: Those are the ones I had in mind, rather than any——

[fol. 6] Mr. McCollester: Oh, yes, as to those, they are involved here.

Mr. Eshelman: They are involved.

Examiner Hoy: All joint rates now in existence are involved.

Mr. McCollester: Whether the basis that may result from this case would be a proper basis for joint through rates to be established depends and will depend in turn on how those rates are divided, as between the rail lines, including Hoboken on the one hand and Seatrain on the other.

Mr. Eshelman: One other question: does this complaint relate only to the rates as they were in effect on the date of the filing of the complaint, and prior thereto? I think

it was March 28th when the Ex Parte 123 increases became effective.

Mr. McCollester: Well, no. Of course, the order must speak for the future, as well as requiring readjustment for the past. Therefore, for the future, it must speak as to any rates which are in existence when the order is entered.

I will say that our evidence will be largely with reference to the rates as they were prior to the Ex Parte 123 increases, that being for the purposes of simplification, and understanding of the law concerned; but the Commission, of course, will have to make an order that speaks for the future will respect to the rates as they have been in effect [fol. 7] when the order is made.

Mr. Eshelman: And is it the complainant's position that the Commission may do that on this complaint?

Mr. McCollester: I do not see why not.

Mr. Eshelman: Then are we to understand that this complaint covers rates in effect at the present time, including the Ex Parte 123 increases?

Mr. McCollester: Well, this complaint will cover rates which are in effect at the present time, and that at the time in the past, and at the time the Commission's order may become effective.

Mr. Eshelman: Well, then, may I ask this question: as to whether or not the divisions complaint, which was docketed under No. 28708, covers other than Seatrain traffic only?

Mr. McCollester: It does.

Mr. Eshelman: I mean other than Seatrain traffic only, or does it also cover Seatrain traffic?

Mr. McCollester: I think that it covers Seatrain traffic. Your point is, to that extent, that there is duplication between the two complaints. That may be; they may overlap; but they overlap only to this extent: only to the extent of how the Ex Parte 123 increases shall be distributed between the complainant and the defendants with respect to Seatrain traffic.

[fol. 8] Examiner Hoy: Well, now, I am not familiar with Docket 28708 except in a general way, and I believe it involves, just as Mr. McCollester said, how the Ex Parte 123 increases shall be distributed.

Shouldn't that be heard in that proceeding, and only heard here the divisions, without the Ex Parte 123 increases?

Mr. Eshelman: In that case, it would narrow——

Examiner Hoy: In other words, there are really two questions: how shall the joint rates be divided before the Ex Parte 123 increases; and then, what may be done in 28708 would be supplemental to that, and would work to.

Mr. McCollester: I think that is a feasible way of working it out, Mr. Examiner.

Examiner Hoy: That is what I thought we would have here; we would have the divisions without any Ex Parte 123 increases, and let that question as to how they should be distributed be decided in Docket 28708.

Mr. McCollester: We are willing to submit this proceeding on that basis.

Mr. Eshelman: I will not prolong this thing. I just want to know, then; is the complainant here asking the Commission as to present rates to divide only so much of those rates as equal what they were prior to the Ex Parte 123 increases, and then, in another proceeding, is the complainant asking [fol. 9] the Commission to divide the balance of that rate?

Mr. McCollester: Well, I think counsel knows that.

Mr. Eshelman: That that is what requested?

Mr. McCollester: In other words, we have in this other complaint to which you have made reference—we have attacked the failure of the defendants to accord the Hoboken their proportions of the Ex Parte 123 increases.

Mr. Eshelman: Well, Mr. Examiner, at this time, then, in the light of the issues as so stated, we should like to reserve an objection to the jurisdiction of the Commission to so divide in this complaint only a portion of an existing rate, leaving to another case the division of a balance of that portion of the rates.

We think that the Commission's power under Section 15, paragraph 6, relates only to the dividing of a whole rate.

Examiner Hoy: Well, this complaint here is broad enough to include the Ex Parte 123 increases, so far as this particular traffic is concerned.

Mr. McCollester: Mr. Examiner, my agreement——

Examiner Hoy: And in view of what you said, I think probably my suggestion was not so good. We had better go with the whole rates, so far as they are involved here.

Mr. McCollester: My agreement with the Examiner's proposal was on the assumption that it was agreeable to all parties as a method of submitting the case.

fol. 10] Examiner Hoy: Well, that was the basis——

Mr. McCollester: If opposing counsel do not agree with ubmitting the issues that way, of course we ask the Commission to divide the rates which may be in effect at the ime this order was issued in this proceeding, and the complaint is certainly broad enough to cover that.

Examiner Hoy: There is no question about that.

Mr. Eshelman: We were not trying to affect you in what our determination might be, but only to find out on what asis you were presenting your case.

Mr. McCollester: Well, we will present it either way. Ve will present it, if the defendants will agree to submit he matter as the Examiner suggested, without taking adantage of the principal points that you tried to make by hat course. We will present it that way. Otherwise, we ill present the case now on the basis of final division of hatever the rates may be.

Mr. Eshelman: Mr. Examiner, I might say—I had not ttended to say it at this time—that the defendants were in quandary as to how the issues in the two cases were to be ried, and we could not but think that necessarily they would e tried together, or that some arrangement would be made or clarification of those issues.

We have been unable to prepare our case for defense ecause of that thing, and we had requested counsel prior fol. 11] to the hearing,—or asked him if it would be his ntention to ask a postponement in order that that matter ight be clarified if we were told no; and therefore, in view f the fact that we are faced by two complaints, it seems o me we should have to leave the complainant to his proof n the issues as he has drawn them.

Examiner Hoy: Well, the complaint is broad enough to nclude the rates, in so far as rates are involved, as of the resent time, which will include Ex Parte 123 increases, so guess, Mr. McCollester, you had better proceed along at line.

Mr. McCollester: Well, Mr. Examiner, in view of Mr. shelman's statement, of which I had heard rumors before e came in here this morning, I want, before we do proceed, inquire what the course of the procedure is going to be. So far as the complainant is concerned, our case is ready. e are prepared to go ahead. We had heard reports that e defendants were not ready, and would ask, after they d heard our evidence, that there be an adjournment.

Now, I think that the Commission should know that this subject of the divisions of these rates on Seatrain traffic between complainant and the defendants has been the subject of constant negotiations between the complainant and the trunk lines since 1932; that in 1933 the conference of railroad presidents appointed a traffic and operating com- [fol. 12] mittee to investigate the facts and to make a report; that in 1934, reports of the traffic committee were made; that we ourselves have talked with various of the railroad presidents, with counsel for the railroads, with traffic and operating people of the railroads constantly, so that there isn't a single angle to this whole situation that can be unknown to the defendant railroads.

We finally brought our complaint in December, 1936, nearly two years ago, upon advice from the railroads that efforts of negotiations were futile, and after we had proposed to submit the matter to arbitration, and indicated constantly our willingness to do so, that they finally said, "Let the I. C. C. decide," and we brought our complaint.

We have been ready to try the case. We have been asked not too in the hope that negotiations might be concluded, but they have come to nothing, and finally, last Spring, we advised the Commission that we were informed by the railroads that there was no further hope of getting anywhere by negotiation, and we might as well bring our case on for trial.

We asked the Commission to set the case for hearing. About the 15th of July, Mr. Hodkinson called me up and said the railroads did not know what to do about the case, and would we agree to an adjournment? I said we certainly would not.

[fol. 13] I think I have talked perfectly freely and frankly with all the railroad people, answered any questions that they have asked us about the case, and they had no reason for asking us questions because, as I say, the whole subject of the case has been the subject of constant negotiation.

Finally, as late as Friday, I think it was, of last week, Thursday or Friday of last week, I got a telephone call saying that the defendants wanted to know if we would not ask for a postponement of the case, and I said no, and that there was no justification for it; that if the defendants had any defense, they certainly knew it at least five years ago, and that therefore we would insist on going ahead with the case.

That is our position now. However, we do not want to be put in the position of presenting our evidence, and then having the defendants allowed an adjournment to prepare something or other to answer whatever we may have. If they have any answer, they must know what it is now.

Therefore, our position, simply, is this: we want to go ahead, and would ask the Commission, at the conclusion of the present sitting, to close the case, fix the time for briefs. If the defendants haven't anything to put in at this time, that is too bad for them, perhaps, but if the Commission is not going to do that, then we do not want to be in the posi-

[fol. 14] tion of having put in our evidence, and having an adjournment granted to the defendants.

Mr. Eshelman: I might say, Mr. Examiner, that by reference to the complaint, which is here before us, we find that it was filed, docketed on December 31, 1936, almost two years ago; that the complainants apparently have, for whatever reason it be, not forced this matter to hearing, thus, as I understand it, confirming, perhaps the very thing that Mr. McCollester said—that there were negotiations during that period.

I might say also that the complaint which has been filed by the complainant in No. 28708 was docketed as recently as August 2, 1938, and that the answers to those are only just in. I think they were due right around the end, about the 31st of August.

In that second complaint, there is an allegation, a further allegation that there had been an offer and an acceptance concerning divisions which, upon reference, relate apparently not to mere increases, but for all that we may know, may represent an allegation of an offer and acceptance as to the entire amount of the division; and nothing is said as to whether that is Seatrain traffic or other than Seatrain traffic, or both.

As far as the issues being clear here is concerned, the very situation of which Mr. McCollester speaks, testifies eloquently, it seems to me that we cannot know what is their

[fol. 15] final proposal, or what is the final issue on which they are now seeking to present this matter to the Commission.

We certainly had a right to consider the allegations of this second complaint along with the first one. We assume

that both those allegations must be true, and if that is so then we submit that we are in a justifiable quandary as to what are the issues that we are here to meet.

Now, as far as having a case ready, we haven't, for that reason, and I might just say on the subject of adjournment, although this is not our reason for the adjournment, that I think in any of these divisions cases, the Commission knows that it is customary for the complainant to put in its case, later, after an adjournment, for the defendant to put in theirs, and then, after another adjournment, if the complainant desires, to submit it.

Mr. McCollester: May I say, Mr. Examiner, in order not to prolong the discussion, that in regard to Mr. Eshelman's statement relating to the allegation of offer and acceptance which is made in our complaint, Docket No. 28708,—on June 2, 1938, a letter was received by the Hoboken from Mr. Hodkinson, as chairman of the Divisions Committee of the Trunk Line Association, setting forth the divisions which were proposed, which the trunk line had offered on certain traffic in the light of the increases in Ex Parte 123.

[fol. 16] Now, those rates to be divided, as stated in the letter, were rates which do not apply to Seatrain traffic. For your information, I might say, as I was going to in an opening statement that I wanted to make, that the situation which has led to these negotiations, and finally to the present complaint, arises out of the fact that the established divisional arrangements between the Hoboken and its trunk line connections do not have application to Seatrain traffic.

On the basis of the divisional arrangements as set forth both in the divisions set in the trunk line tariffs and in Hoboken's tariffs on freight other than silk or certain specially named commodities, the divisions are stated as $1.35 per ton on carload freight, loaded or unloaded by Hoboken Manufacturers Railroad, or at its expense; at 60 cents per ton on carload freight, loaded or unloaded by shipper or consignee, or at their expense.

Now those are the exact provisions to be found, I think, in every tariff or division sheet. They go back to an agreement made between the Hoboken and the Trunk Lines, compromising a divisions case that was instituted by the Hoboken when it was owned by the United States Government, and operated by the War Department.

Now, you will see that those provisions do not apply to Hoboken's handling of Seatrain traffic, because Seatrain traffic is neither loaded nor unloaded by the Hoboken at [fol. 17] its expense, nor is it loaded or unloaded by the shipper at its expense.

It is not loaded or unloaded at all, and it is because of that fact that we have had all of this controversy, because there is no agreement, and our complaint alleges that there is no agreement between the parties, and we haven't been able to arrive at one.

Now, Mr. Hodkinson's letter quoted those two provisions and proposed, where the division is now $1.35, that it should become $1.49 if the through rate had been increased 10 per cent, and $1.42 if the through rate had been increased 5 per cent.

Where the division is now 60 cents, it should become 66 and 63 cents respectively.

In other words, it was an offer which related to traffic, as covered by the existing divisional arrangements, as to which there is an agreement, and did not relate to Seatrain traffic at all, because it was not—the terms are not applicable to Seatrain traffic.

Now, just to be sure on that point, when Mr. Hodkinson's letter was received, Mr. Mathey, to whom it was addressed, call- Mr. Lawrence or Mr. Hodkinson—he is not sure which; I think it is Mr. Lawrence, as I recollect it,—and asked him what the railroads were going to do on Seatrain traffic, and Mr. Lawrence replied,—this letter does not relate to Sea- [fol. 18] train traffic, and we have not decided what we are going to do.

Thereupon, this offer contained in Mr. Hodkinson's letter was accepted by the Hoboken Manufacturers Railroad and, having been accepted, the trunk lines have not paid the divisions provided for therein.

Mr. Eshelman: Well, in the light of what Mr. McCollester says, if the second complaint relates only to other than Seatrain traffic, that at least would dispose of our difficulties about an apparent overlapping of complaints, and certainly that much of a splitting of the issues.

I realize we do not have the other complaint here on trial before us this morning, but we are perfectly ready to accept Mr. McCollester's word if he tells us that that is all that is involved in that case—other than Seatrain traffic.

Mr. McCollester: Well, I would put it this way: in this proceeding counsel for defendants are going to take the position indicated by you earlier—move for a dismissal if we deal with this case as though it involved the rates prior to the 123 increases—why, then, this case will dispose of the divisions on Seatrain traffic, and will leave for the other case only the divisions on other than Seatrain traffic, and we are agreeable to have the matter submitted that way.

Examiner Hoy: Well, the Commission has set this case [fol. 19] down for hearing. It set it down on June 17th, approximately three months ago, and they expect the parties to put in their evidence, so we will proceed with the case.

Mr. Eshelman: I might say, I think it is no more than fair to complainants to say that in that matter, Mr. McCollester's statement does clarify for us that situation, and we will then understand that this case will cover Seatrain traffic alone, and that the other will cover other than Seatrain traffic.

Examiner Hoy: Yes, and it will cover Seatrain traffic as of the present time, including the Ex Parte 123 increases.

Mr. Eshelman: Yes, you say the present complaint. I might ask one other thing: does this present complaint include any divisions on coal, coke, and iron ore?

Mr. McCollester: Yes.

Mr. Eshelman: It does?

Mr. McCollester: It includes all traffic.

Now, our evidence—we are not going to have any particular evidence on coal, coke and iron ore.

Mr. Eshelman: Well, you have a separate situation on that.

Mr. McCollester: We have very little of that traffic. That is why it does not—we have had some movement recently of hard coal.

Mr. Eshelman: Well, I might say we had not antici [fol. 20] pated—in fact, it had not been called to our attention that it might be involved by our people until later. That is one of the things I will have to cover.

Mr. McCollester: Mr. Carbine called me up, and asked me about that, and I said our complaint covered all traffic, but we would have very little evidence relating specifically to that, because it had very little movement.

Mr. Examiner, on that understanding, we are prepared to proceed, and I would like, with your permission, to make a somewhat brief statement before calling our first witness.

The reason I do this is the obvious one that we cannot put in all our evidence at one time, or do it in an entirely logical order, and therefore I think that it will be helpful to you, and I hope that it will clarify any doubts that the defendants may still have, if they are entitled to have any, as to the theory of our case, so that, as the evidence comes in, you can allocate it to its proper position in our final presentation.

Now, with respect to the Hoboken Manufacturers Railroad, the complainant here, I think that a word of explanation is desirable. We will show you that the Hoboken Manufacturers Railroad is a switching line, and like any other switching line, it is employed, in effect, as a terminal agent for the trunk line railroads to complete the transportation service covered by the rates to which they are [fol. 21] parties.

The fact that if compensation is received in the form of divisions of joint rates, rather than as switching charges absorbed by the trunk lines, does not change the character of its service, as the Commission itself has so held.

We have had other divisions cases in which the Commission has found the Hoboken, as I will call it, to be a switching line.

The divisional arrangement is an historical one, and it is because the rate—because its compensation is in the form of divisions rather than in the form of switching charges, that in order to secure a change or secure what it considers reasonable compensation, it must do so through the medium of the divisions case.

Now, as I have already said, but which I have down in my statement, and to make it consecutive, I would like just to repeat—that this proceeding involves the divisions as between Hoboken on the one hand and the trunk lines and their connections on the other, of joint through rates only as applicable to freight delivered to or received from the same lines, whether those rates are published as local or proportional rates to or from Hoboken, or published as joint through rates to which Seatrain also is a party.

Mr. Eshelman: Excuse me, would you permit an interruption there? I am not representing Southwestern Lines,

[fol. 22] of course, as you know, but just as to those few rates that might be joint rates that are now in existence, I would understand from your statement that you are only attacking whatever is the proportion, you might say, west of Hoboken?

Mr. McCollester: That is right, the Southwestern railroads were made defendants, really formal defendants because they are parties to the rates, but, of course, as we will show, those rates are divided in the first instance, so far as we here are concerned, between the carriers that bring the freight up to Hoboken, and the carriers that take it from Hoboken, and we are asking a subdivision of the portion from Hoboken to the interior.

Mr. Gault: May I ask in that connection—I am here representing a group of western trunk lines—upon what theory did you join those railroads as defendants?

Mr. McCollester: Because those railroads are parties to rates to or from Hoboken that are to be divided here.

Mr. Gault: Seatrain rates?

Mr. McCollester: No, rates to or from Hoboken.

Mr. Gault: All right.

Mr. McCollester: Now, as the Examiner stated, we ask an order both for the future, and an order requiring an adjustment of divisions to the date of the complaint. We also ask the Commission to make a finding as to what would be just and reasonable divisions in the past, recognizing [fol. 23] that the Commission has no jurisdiction to make an order requiring readjustment, except where it has fixed the rates to be divided, and then only to the date of the filing of our complaint; but as we conceive it, unless the trunk lines will agree to settle for the period since 1932 on the basis of whatever may be determined for the future, Hoboken has no remedy except to proceed in court, and we conceive that we have a course of action there for just and reasonable compensation, having performed service without an agreement, and therefore, with an implied agreement for reasonable compensation.

The decisions of the courts seem to indicate that under those circumstances an expression at least should be sought from the Commission as to what it considers the proper just, reasonable, and non-discriminatory divisions, before the court will pass upon that issue itself.

Mr. Gault: May I ask a question: I understood you to say in connection with the Southwestern Lines—to say only

the divisional factor up to their connection with the eastern trunk lines, and—is that what you said?

Mr. McCollester: Well, as I understand it, so far as the southwestern lines are concerned, where there are joint rates, those rates are divided between the southwestern lines and the water carriers on the one hand, and the eastern railroads on the other, and we are asking the subdivi- [fol. 24] sion of the eastern railroads' proportion as between the Hoboken and its rail connection.

Mr. Gault: Well, now, as far as the western trunk lines are concerned, you are not attempting to put in issue the divisions west of the gateways, like Chicago?

Mr. McCollester: We are attacking only the primary divisions as between the Hoboken on the one hand, and all of its rail connections that are parties to the rates to be divided, west of Hoboken, interchanged, on the other hand, and that includes some of the western trunk lines which are parties to such rates.

We are not asking the Commission in turn to subdivide as between the eastern trunk lines and the western trunk lines. We are doing just what was done in the New England Divisions Case—asking for the primary division between Hoboken on the one hand and all of its rail connections on the other.

Mr. Eshelman: May I interrupt you, just to be clear, it is my understanding that this complaint does not attempt to bring in issue the divisions of such rates as may be established pursuant to the order of the Commission in the Seatrain Case, No. 25727, I believe that is.

Mr. McCollester: I thought I said on that that since no such rates are in effect now, we cannot offer any evidence about them, and we hope that the basis of divisions may be [fol. 25] appropriate for those rates, but whether it is or not depends in turn upon how those rates are divided between Seatrain on the one hand and the rail lines, including Hoboken, on the other. In other words, we do not want to have any more litigation than we can help.

Now, Mr. Examiner, I have already explained to you that this is not a case where there is an existing basis of divisions fixed either by agreement of the parties, or by order of the Commission, which it is sought to have changed.

We will show you there is on the Seatrain traffic no basis of divisions at all. We will show you you, as I have in-

dicated, that the Seatrain traffic, at least where the cars are delivered to or received from Seatrain, is not covered by the existing divisional arrangements.

We have been going ahead since Seatrain started operation in 1932, in confidence that ultimately a divisional basis appropriate to the facts as to that traffic would be worked out.

The trunk lines, as we will show, have consistently contended that Hoboken's divisions on this traffic should be no more than Hoboken's divisions on traffic which is loaded or unloaded by the shipper or consignee, or at its expense—in other words, 60 cents.

Hoboken has insisted that it is entitled to something more than that, because it does more service, because the service [fol. 26] is more valuable to the trunk lines, and for various reasons which we will develop, but it is because we haven't been able to come to an agreement on that, that we are here before the Commission.

What we are claiming, and we think that the proof we will present will support our claim, is that on out of rates which cover the loading or unloading of freight from the car, the placement of freight alongside the ship within reach of ship's tackle—in other words, rates which are the equivalent of shipside rates, which you heard discussed at New Orleans, and which here at New York are generally referred to as lighterage free rates—that out of such rates the Hoboken shall receive a division of $1.35 per ton; that on freight which moves at rates with——

Examiner Hoy: Mr. McCollester, that, I presume, $1.35 is exclusive of Ex Parte 123 increases?

Mr. McCollester: That is right, that is exclusive of Ex Parte 123—that out of rates which involve no obligation upon the railroads to load or unload the cars, or to place the freight within reach of ship's tackle—in other words, on non-lighterage free rates or non-shipside rates, where the service of the railroads is simply that of putting the car on the side tracks, the Hoboken asks only 60 cents per ton, speaking as of prior to the Ex Parte 123 increases.

Now, those bases of divisions are the same as, we will [fol. 27] show you, those that are applicable to all traffic interchanged with water lines, at least where the Hoboken is a party to the transportation.

Now, theory of our case—before I come to that, let me say this, Mr. Examiner:

Earlier, during the negotiations that have gone on all these years, we supposed, as a compromise, that instead of the basis of divisions I have indicated here, the Hoboken should receive $1.00 per ton on all freight. That proposal, as we will show you, was made with the idea that the Seatrain investment and invention, and the investment of Hoboken in conjunction with Seatrain, involving as it did saving of operations in interchanging freight with the water carrier, Hoboken was willing to offer a portion of those savings to the railroads, its trunk line connections.

It was also made on the assumption, which was the fact at that time, that the bulk of the freight moving in connection with Seatrain, was freight that moved on lighterage free or shipside rates.

As we will show you, the character of the traffic has changed. Why, we don't know. So that at the present time there is both traffic on non-lighterage free rates, and on lighterage free rates, and the basis that we seek here is arrived at both as being fairer to all concerned, and as being in conformity with the tariff situation, and with the [fol. 28] undertakings under the rates to be divided.

As I said, when we started our talk this morning, Mr. Examiner, remarking upon your statement of the issues, our theory of the case, to which our proof will be directed, approaches the issues from two angles:

First is from the standpoint of the divisions to be received or retained by the trunk line defendants themselves, and their connections, and we submit and will offer evidence to show that they will be unreasonable and unduly prejudicial and unfair if in excess of divisions which would accrue to them after paying the Hoboken the divisions which it seeks, as I have indicated.

We will show that this is so in comparison with the divisions which the trunk lines accept on freight interchanged with the Pan Atlantic, with the Holland American, and on all other freight moving under shipside rates.

We will show that the service of the trunk line defendants is no greater on Seatrain traffic than in connection with this other freight.

We will show that the trunk line divisions will be unreasonable if higher than those I have indicated in comparison with their revenues after the allowances that they paid to the Brooklyn contract terminals, or after perform-

ing lighterage service or delivery to other steamship lines in New York Harbor.

[fol. 29] Now, from the standpoint of the Hoboken, which is the other angle from which we approach the issue, we will show that a division less than $1.35 on out-of rates which cover shipside delivery or receipt, will be unreasonable in comparison with the allowances paid to other terminal operators in New York Harbor in comparison with divisions paid to other short line switching railroads, in comparison with the divisions or charges in one form or another received by the trunk lines themselves out of the very—out of these very rates, and also as measured by the Hoboken's costs and revenue needs.

On this latter point, we will, of course, describe the Hoboken Railroad and we will show you that it is being efficiently operated. We will show you that the divisions which it seeks will be barely sufficient to meet its operating costs.

As to its operating costs we will start with the proposition that 60 cents is a minimum possible division for switching service alone. We will show you that this was so found by the trunk line operating committee which, in fact, found that Hoboken's costs were in excess of 60 cents for switching alone.

We will then come to the question whether, on Seatrain traffic, the Hoboken is entitled to something more than its switching—than would be a minimum division for switching [fol. 30] service only.

On this point, Mr. Examiner, our case turns in considerable part upon a contract between the Hoboken and Seatrain, under which, on freight moving under rates which includes shipside delivery, or receipt, the Hoboken makes a payment to Seatrain.

Now, this contract, as we recognize, was not negotiated between Hoboken and Seatrain, as between parties that were bargaining at arm's length. Therefore, we recognize that the right of the Hoboken to include payments under this contract in its costs for the basis of determining a fair division of the rates depends upon whether, on all the facts and under all of the circumstances, the contract itself was a fair and proper contract.

On this point we will show you first the negotiations which Seatrain undertook for a terminal in New York

Harbor. We will show you that Seatrain first negotiated with the trunk lines directly, and that these negotiations were always upon the understanding that in view of the saving in interchange which Seatrain's investment and invention made possible, and the benefit to the trunk lines, a payment would be made to Seatrain, dividing that saving as between Seatrain and the trunk lines.

We will show you that it was at the recommendation of the Pennsylvania Railroad that Seatrain looked into the [fol. 31] question of a terminal on the Hoboken Manufacturers Railroad, in order to have a terminal on a railroad which would be neutral as between all the trunk lines, and we will show you that when the negotiations were started with the then owners of the Hoboken Manufacturers Railroad for a terminal on the assumption that they would continue to own and operate the road, this was on the basis of that same understanding—that the savings would be divided.

Then we will show you that the Seatrain was forced to acquire the Hoboken because it became apparent that its financial condition would prevent its continued operation unless it was furnished with new capital, and that it was in a position, without new capital, to make the investment necessary to provide a terminal for Seatrain, and that when it was acquired, as I have said, the contract was entered into providing for a payment to be made by Hoboken to Seatrain, this payment being made for the certain services which Seatrain performed for Hoboken in completing the delivery or receipt of freight.

We will show you that the amount of the payment is predicated upon the lowest cost for stevedoring paid by the Hoboken to any stevedore contractor for interchanging freight with other—handling freight to or from other steamship lines.

We will show you that the contract was a reasonable con[fol. 32] tract from Hoboken's standpoint because the railroad greatly benefited thereby in having a large volume of traffic that it could not otherwise secure.

We will show you that the Hoboken's expenses are in large proportion fixed expenses, rents, and taxes, and that therefore the greater volume of the traffic handled, the less the unit costs of handling that traffic; and that therefore, in giving added traffic to the Hoboken, the Hoboken is being benefited, and the trunk lines likewise were being

benefited, if we assume that the Hoboken should continue in operation.

We will argue that the payment is not unfair to the trunk lines because they will receive the same compensation on freight interchanged with Seatrain that they do on freight interchanged with other water lines; that they do no greater service; and we will show you that they themselves make similar payments to other steamship lines; and finally, if your Honor please, we will urge upon you, but this largely by way of argument in brief, that if this contract is not a proper contract, or the payments under it are not properly chargeable to Hoboken's costs for the purposes of this divisions case, and if the trunk lines are entitled to have Hoboken's costs determined simply as the costs of switching the cars, the result will be that the trunk lines will benefit by the Seatrain service which they have done [fol. 33] their very best to defeat, in the saving in increased revenue on freight moving by Seatrain, as compared to freight moving by other water lines; and that Seatrain will not get the benefit of its investment or invention, nor will the Hoboken.

That is all, Mr. Examiner, but I make that statement, as I say, so that you may know in advance what our theory is, and what our arguments will be, and can judge the evidence to be offered in the light thereof.

Our first witness is Mr. Mathey.

Examiner Hoy: Let us have five minutes recess before we proceed.

(Thereupon, a short recess was taken.)

After Recess

W. J. Mathey was sworn and testified as follows:

Direct examination.

By Mr. McCollester:

Q. Where do you reside, Mr. Mathey?

A. Clifton, N. J.

Q. What position do you hold with the Hoboken Manufacturers Railroad, the complainant here?

A. I am vice-president.

Q. In your capacity as vice-president, are you in charge of its traffic department?

A. I am.

[fol. 34] Q. How long have you been connected with that railroad?

A. Since August, 1932.

Q. Will you state briefly your railroad experience prior to that time?

A. For approximately twenty years I was connected with the Erie Railroad in various capacities in the traffic department, and about six months experience in the operating department. During that period, I was stationed with the general office in Chicago for about eleven years, and in the general office in New York for about nine years.

Q. During your connection with the Erie Railroad, did you have supervision over their divisional arrangements?

A. I did for a period of ten or eleven years.

Q. Have you had prepared a blueprint map of the line of the Hoboken Manufacturers Railroad?

A. I have.

Examiner Hoy: This will be Exhibit 1?

(Exhibit 1, Witness Mathey, received in evidence.)

Mr. McCollester: May it be understood, Mr. Examiner, that the exhibits are offered and received when identified.

Examiner Hoy: Unless objection is made, it will be so understood.

Q. Does the Hoboken Manufacturers Railroad serve piers of and handle business in connection with various steamship lines at Hoboken?

[fol. 35] A. Yes, the Hoboken Manufacturers Railroad serves all of the piers located in Hoboken, where steamship lines dock, including the Seatrain Lines.

Q. Would you give the names of some of the steamship lines which dock at Hoboken, whose piers are served by the railroads?

A. So far, as coastwise traffic is concerned, the only line other than the Seatrain Lines which docks at Hoboken at present is the Pan Atlantic Steamship Corporation. The dock is at Pier 4.

On foreign business, the American Pioneer Line and the America France Line dock at Pier 1.

The Holland American Line docks at Piers 7 and 8.

The Gydina American Line docks at Castle Point Pier.
The Scandinavian American Line docks at pier 14.
Lamports & Holt Lines dock at Pier 15.
The Ellerman Wilson Line docks at pier 9.
The Italian Line docks at Pier 2.
The Red Star Line docks at pier 3.

Those are the regular steamship lines which operate from Hoboken, but occasionally, there are other steamers which come in with full cargoes which dock at various piers.

Q. Now will you state generally, without going into the details of the operations, how shipments to and from these lines are handled when they move via the line of the com- [fol. 36] plainant and its trunk line connection?

A. On carload traffic which is lightered free, the cars are switched either on or alongside of the pier, and the shipments unloaded from or unloaded to the cars at the expense of the railroad.

On non-lighterage free freight, cars are simply switched to or from the pier, and the loading or unloading of such traffic is for account of the shipper.

Q. And those practices are in accordance with the tariff provisions of the railroads, the trunk lines, and other railroads relating to lighterage free and non-lighterage free freight, are they not?

A. That is right.

Q. In what form does the Hoboken Manufacturers Railroad receive its revenue on business handled in connection with the trunk lines?

A. The Hoboken Manufacturers receives its revenue in the form of divisions of through rates, joint through rates.

Q. And it is a party to those rates?

A. It is a party either to the actual rate tariffs, or under the terminal tariffs of the trunk line railroads, they provide that on traffic to or from Hoboken, Hoboken Manufacturers, in the absence of a specific rate, that the rates to or from New York City will apply.

Q. Now, have you prepared, Mr. Mathey, as an exhibit, a [fol. 37] statement showing the divisions or allowances paid to the Hoboken Manufacturers Railroad by the trunk lines?

A. I have.

Q. That is the exhibit with the caption, "Statement of allowances to Hoboken Manufacturers Railroad," is that correct?

A. That is correct.

Mr. McCollester: That will be marked Exhibit 2.

Examiner Hoy: Yes.

(Exhibit Mathey, received in evidence.)

Q. Now, although these are referred to in your testimony, and elsewhere, quite generally as allowances, they are more strictly speaking divisions of joint rates, are they not?

A. That is correct.

Q. How you any comments on this exhibit?

A. None, except that this exhibit shows the allowances which were made prior to Ex Parte 123, and also the allowances which have been offered to the Hoboken Manufacturers on shipments moving since the effective date of that case; that is, of course, not on Seatrain traffic.

Q. The language set forth on the left of this exhibit is the language appearing in the tariff to which you have made reference; is that correct?

A. That is correct.

Q. And a similar language contained in the tariffs or [fol. 38] division sheets of other trunk line railroads?

A. It is.

Q. And also in Hoboken's own tariffs?

A. Yes.

Q. Will you state what the origin of the divisions or allowances were?

A. Well, these allowances either result under compromise made between the trunk lines and the Hoboken Manufacturers Railroad—I believe it was in 1920, following the filing of a complaint before the I. C. C., and which was finally compromised, and the complaint withdrawn.

As to silk, I should have said that on silk the allowances there shown are the result of an order of the Interstate Commerce Commission.

Q. And these have been in effect for a good many years?

A. They have.

Q. Mr. Mathey, just by way of correction, I think you stated in your testimony that the figures shown under the heading, "Under Ex Parte 123," are the divisions offered by the trunk lines, is that correct, or are those divisions——

A. I should have said those are the divisions which they finally got out in one of their proceedings. That is what I meant to say.

Q. Those are not the divisions that were set forth in the offer contained in Mr. Hodkinson's letter, to which we re-
[fol. 39] ferred?

A. No, I didn't have reference to that.

Q. Actually, these are less than Mr. Hodkinson offered; is that correct?

A. That is right.

Q. Does the Hoboken Manufacturers Railroad have direct physical connection with all of the trunk lines?

A. No, it has not. The only actual business connections are at Weehawken, with the Erie Railroad, and, since the latter part of August, with the Delaware, Lackawanna & Western Railroad, the latter being accomplished through the medium of a float bridge at 11th Street, Hoboken, which has recently been completed.

Q. How is interchange affected with the other New York Harbor trunk lines?

A. The West Shore Railroad connects with the Hoboken Manufacturers Railroad through switching service of the Erie Railroad at Weehawken. The Pennsylvania and Lehigh Valley Railroads interchange via Jersey City with the so-called New Jersey Junction Railway, which is part of the West Shore Railroad, and thence via the Erie.

The Central Railroad of New Jersey makes connection via Jersey City, thence the National Docks Railway, which is a part of the Lehigh Valley Railroad, and thence via the New Jersey Junction and Erie Railroads.

[fol. 40] Q. Let me ask you there, Mr. Mathey: as a traffic man, in connection with the publication of rates, would you consider the Hoboken Manufacturers Railroad service a switching service?

A. It is.

Q. Have you a map issued by the Port of New York Authority showing the intermediate rail lines that you have just referred to in relation to their location—in relation to the location of the Hoboken Manufacturers Railroad?

A. I have.

Q. And that map shows, also, other rail and steamship terminals in New York Harbor, does it not?

A. It does.

Mr. McCollester: We offer this, and ask that it be marked as an exhibit.

(Exhibit 3, Witness Mathey, received in evidence.)

Q. Have you any comments on exhibits 3, Mr. Mathey?

A. I don't believe any is necessary, except that I might say that the lines used to make interchange with the Erie are embraced in the New York Port Authority so-called belt line No. 13, which begins in Bayonne, on the Lehigh Valley, thence running north, via the National Dock Railway, to National Junction, thence via the New Jersey Junction Railroad, West Shore, and N. Y. N. & W. Railroads to Edgewater, New Jersey.

[fol. 41] Q. The map also shows the location of the Brooklyn contract terminals, does it not?

A. It does.

Q. Are you familiar with the arrangements between the trunk lines and the so-called Brooklyn contract terminals?

Mr. Eshelman: I object to the question, your Honor, if it is supposed to go into the question of——

Mr. McCollester: I will hold the question for the time being. I am getting ahead of myself.

Q. Now, Mr. Mathey, looking at the map, Exhibit 3, just one more question: I am not asking you as an operating man; I am asking you on the basis of your experience as a traffic man in general, familiarity with the New York Harbor Railroad situation. Is freight handled by the trunk lines over the route you have described to and from Hoboken, so far as you know handled in any different way, if it is going to the Pan Atlantic, than if it is going to Seatrain?

A. No difference whatsoever.

Q. And no difference between Seatrain's rate and Holland American, or any other water line docking at Hoboken, so far as the rail service up to the Hoboken Railroad interchange is concerned?

A. No difference.

Q. Have you prepared a statement showing the charges assessed by the intermediate lines against the trunk lines [fol. 42] in order to make connection with the Hoboken Manufacturers Railroad?

A. I have.

Mr. Eshelman: These are out of the rates involved in this proceeding, are they not?

The Witness: What is that?

Mr. Eshelman: These are amounts of the rates which are to be divided in this proceeding?

The Witness: These are the amounts the trunk lines paid to reach the Hoboken Manufacturers Railroad.

Q. And they would come out of the rates involved in this proceeding?

A. That is correct.

Q. Have you any comments on Exhibit 4, Mr. Mathey?

A. None, except to point out that this again shows the payments prior to and following Ex Parte 123.

Mr. Collester: We ask that this statement be marked Exhibit 4, and received in evidence.

(Exhibit 4, Witness Mathey, received in evidence.)

Q. Are these charges set forth in Exhibit 4 published in any tariff on file with the Interstate Commerce Commission?

A. The only charges which are so published are the switching charges of the Erie Railroad.

Q. Now, are there other short line railroads or contract terminals in New York Harbor district which either connect [fol. 43] with the trunk lines or act as their agents under contract?

A. There are.

Q. Have you prepared an exhibit to show the allowances to these other terminals or the divisions received by short line railroads in New York Harbor?

A. I have.

Q. Is that the exhibit which is captioned, "Statement of allowances to various New York Harbor terminal companies"?

A. It is.

Mr. Eshelman: Mr. Examiner, in view of the ruling about the admission of exhibits in the absence of objection, perhaps at this point I should interpose an objection to this exhibit on the ground that it apparently relates to divisions out of rates other than those involved in this proceeding.

As I understand the Commission's power and jurisdiction under paragraph 6 of Section 15, it is to divide certain

rates, and out of those rates, to prescribe joint, reasonable and equitable divisions.

There is nothing in that statute, as I understand it, which entitles the Commission to take another division out of another rate, and use that by comparison, as a basis for what would here be done.

That is to say, in each divisions case, or in the case of each division, there may be considerations of traffic or [fol. 44] operating nature, or otherwise, which may have affected that division.

Now if we are to try one division case instead of a dozen division cases, it would undoubtedly be much better to stick to what is here done with some, perhaps, intentioned to the relative amount and cost of the service, but to say that because, for some other service, or at some other point, or out of some other rate, or on some other traffic, we pay certain amounts under some other conditions, whether agreed upon or fixed, is certainly going beyond the scope of what the Commission is required in this proceeding to do.

Therefore, I make the objection that under the statute this is irrelevant and incompetent and immaterial.

Examiner Hoy: I presume, Mr. McCollester, you are going to connect this up with some evidence showing the service performed to reach these terminals?

Mr. McCollester: Yes.

Mr. Eshelman: Even so, your Honor, we take it it would not become pertinent even under those circumstances.

Examiner Hoy: Well, the objection will be overruled. Just, reasonable and equitable are pretty broad terms under the rules, and I think the divisions are entitled some weight in determining what is just, reasonable and equitable divisions under still different rules.

Mr. Eshelman: Mr. Examiner, not knowing whether under [fol. 45] our practice as it now stands it is necessary to record an objection, I should like to have an objection recorded, if that is the proper means.

Examiner Hoy: The record will show that Mr. Eshelman notes an exception to the Examiner's ruling.

Mr. Eshelman: This will be No. 5, your Honor?

Examiner Hoy: Yes, that will be Exhibit No. 5.

(Exhibit 5, Witness Mathey, received in evidence.)

Q. Have you any comments on Exhibit 5, Mr. Mathey?

A. No particular comment, except to state that the carriers shown in the first block—that is, the Brooklyn Eastern District Terminal, Washington Docks, Dey Street Terminal, and Harlem Transfer Company—are not parties to any rail line tariffs, but simply act as agents for the various truck lines under contract.

The Bush Terminal Railroad and the New York Dock Railway, on the contrary, participate in joint through rates, the same as the case with the Hoboken Manufacturers Railroad, either by being shown specifically in the road haul carriers' tariffs, or by the application of the trunk lines' terminal tariffs.

Q. The New York Dock Railway divisions were prescribed by the Commission, were they not?

A. They were.

Q. Mr. Mathey, on freight to or from one of these Brook- [fol. 46] lyn terminals, are the revenues of the trunk lines on such rate revenues after the payments of these allowances, or divisions, shown on exhibit 5?

A. I didn't quite get that question.

Mr. McCollester (To reporter): Will you repeat that?

(Question read.)

Q. In other words, the allowances or divisions shown on Exhibit 5 come out of the——

A. Out of the revenues of the trunk lines.

Q. Revenues of the trunk lines?

A. That is right.

Q. What they retain is the revenue that may be left after the payment of these allowances or divisions; is that correct?

A. That is correct.

Q. Now, were you familiar with the negotiations that led to the contracts with the contract terminals?

A. Yes, those negotiations were conducted while I was connected with the Erie Railroad.

Q. And can you state what services are performed thereunder for which these allowances are made?

Mr. Eshelman: Mr. Examiner, I take it that our objection runs to all the line of testimony that relates to the exhibit.

Examiner Hoy: I so understand, yes.

[fol. 47] A. The so-called harbor Brooklyn contract terminals pick up the freight at float bridges of the various trunk line railroads, either on the Jersey Shore, or in New York.

In the case it would be New York Central, if it were handled that way, it would be floated over to air float bridges, in Brooklyn, switched—the cars switched and placed for delivery at the steamship piers, at their tracks, or various sidings served by those railroads.

Q. The rates out of which those are paid are rates which apply, cover transportation through to the Brooklyn terminals?

A. That is correct.

Q. And the rail service under those—strike that.

And the rail service ends with the delivery of the car upon the car float at the trunk line floats bridge; is that correct?

A. That is correct.

Examiner Hoy: Well, that is the rail service of the line haul carrier?

Mr. Collester: Of the line haul carrier, yes.

Q. Now, have you prepared an exhibit to show allowances to various short line railroads located in the eastern territory, but not in New York Harbor?

A. I have.

Q. Is that the statement with the caption, "Allowances' [fol. 48] to various short line railroads on traffic to and from trunk line and C. F. A. territories?"

Mr. Eshelman: I make the same objection to this exhibit, and, assuming the same ruling, would like to note an exception.

Examiner Hoy: I presume, Mr. McCollester, you will also show what services are rendered for these charges.

Mr. McCollester: Not in detail, Mr. Examiner, I want to ask the witness one question on that before you rule, if you want.

Q. Mr. Mathey, are the railroads named all short line railroads performing substantially a switching service, or short rail service?

Mr. Eshelman: Just one moment, sir. May I hear that question read?

(Question read.)

A. I would say short rail service. Of course, some of them do perform a switching service, but I cannot go into detail about that, because I don't know offhand.

Q. The lengths of the lines are shown on the exhibit, are they not?

A. They are.

Q. Have you any further comment on the exhibit?

A. While this exhibit, I believe, is self-explanatory, I want to say, in connection with the divisions to various [fol. 49] short line railroads, these allowances are made in the absence of agreed percentage divisions. From my previous knowledge, in making divisions, the practice with the short line railroads and their direct trunk line connections is to make the rates based on the so-called percentage block system, with a minimum proportion to either line to each line on the route.

Among such lines, which I happen to know which connect with the Erie, are the Arcade & Attica, the Middletown & Unionville Railroads, which lines received a minimum proportion of 20 per cent of the rate if that is less than they would get on a percentage block system.

Mr. Eshelman: You mean less or more?

The Witness: They would get more. I said the 20 per cent is the minimum.

Mr. McCollester: We offer the exhibit in evidence.

Mr. Eshelman: May I have my objection and exception to that, your Honor?

Mr. McCollester: It is offered, Mr. Examiner, simply for this purpose, to show what division sthe trunk line railroads are willing to pay to short lines for short haul as compared to the divisions they have been insisting on so far as the Hoboken is concerned.

We offer nothing further as to services, except the miles operated of the short line railroads.

[fol. 50] Mr. Eshelman: Mr. Examiner, there is certainly nothing about the exhibit itself that shows whether the trunk lines are willing to do this, as to why they would, as to what was the nature of the reasons that may have forced this thing, whether in any case, a fixation of divisions or

whether by agreement, or the nature of the conditions that may have forced the agreement, if there is agreement.

Certainly it does not appear here, and based upon the showing as made by Mr. Mathey's testimony, it seems to me it is very obvious that this is without pertinency and, therefore, as to this proposed exhibit 6, I move to strike well, if it is not received, I move to strike the testimony, and object to the exhibit.

Examiner Hoy: Well, I certainly do not see any materiality to it in this proceeding. On the first page, the short lines,—it does not state where they are located. I do not know where they are. The second and third pages——

Mr. McCollester: There is only one page.

Examiner Hoy: Oh, only one page. It shows the length of the lines. It does not show anything as to the conditions in connection with how traffic moves over them. I do not see where it has anything—where it has any pertinency here in fixing just, reasonable, and equitable divisions of the Hoboken, even for comparative purposes.

Mr. McCollester: Well, I think it is pertinent, Mr. Ex- [fol. 51] aminer, from the standpoint of the reasonableness of the trunk line divisions. These come out of trunk line revenues and traffic comes from points on these lines. We are entitled to——

Examiner Hoy: What are the trunk lines railroads?

Mr. Gault: May I ask a question?

Mr. McCollester: We cannot prove everything at once.

Examiner Hoy: These rates are not necessarily the New York rates, so far as the exhibit——

Mr. McCollester: No, that is very true.

Mr. Gault: May I ask a question in connection with this?

Examiner Hoy: Just wait one minute.

Mr. Gault: Yes.

Examiner Hoy: If this is all you are offering, with no explanation as to where the records are located, the rates that apply, and what is left of the trunk lines, I am inclined to rule the exhibit out.

Mr. McCollester: We can tell you, Mr. Examiner, where these roads are located, but that is all. We do not insist on the exhibit, if your Honor feels——

Examiner Hoy: You show what they get, but there is nothing to show out of what it comes, or what is left of

the trunk lines. I think I will sustain the objection to that exhibit.

Q. Now Mr. Mathey, what is the situation with respect [fol. 52] to the publication of switching charges on the New Jersey Shore?

A. As a general proposition, there are no joint switching rates published, and there are few switching rates which apply from one station to another in the New York Harbor territory.

Q. And have you prepared an exhibit showing some of these switching charges published by the trunk line railroads?

A. I have.

Q. Is that the statement with the heading, "Switching charges assessed by trunk line railroads"?

A. It is.

Q. And it is a statement of two pages?

A. Two pages.

Q. Are all of those switching charges——

Mr. Eshelman: Excuse me, sir. You are relying on the understanding, now—must I make my objection?

Mr. McCollester: I have not offered it yet.

Mr. Eshelman: I did not know whether you were going to.

Mr. McCollester: I am going to.

Q. Are all of these switching charges for switching services in the New York Terminal area?

A. These are not all of them, no.

Q. I say, are all that are shown here for switching service in the New York Terminal area?

A. They all are, with the exception of the examples given [fol. 53] for the Central Railroad of New Jersey.

Q. Have you any further comments upon the statement?

A. I don't think so, except to say that I haven't shown any switching charges of the Lehigh Valley or the Pennsylvania Railroads as I did not have the tariffs in my possession.

Mr. McCollester: Mr. Examiner, you will see—I think the exhibit sufficiently describes the switching operations to which the rates apply, and if you will compare the exhibit with the map, Exhibit No. 3, you will see between what points these switching charges apply.

That is correct, is it not, Mr. Mathey?

The Witness: That is correct.

Mr. McCollester: We offer this in evidence.

Mr. Eshelman: Mr. Examiner, we object to the reception of this exhibit on the ground that it is without relevant effect, on the ground that certainly, by itself, it cannot possibly show the service involved at those various points; neither can the actual, service necessary to perform the estimated or determined or approximated, necessarily, by any reference to a map; certainly, not to this map, which, so far as these detailed moves would be concerned, is substantially undetailed; and, moreover, the exhibit is clearly incompetent for the reason that these, by the very statement at the head of the exhibit, indicates that they are switching charges assessed against the public for particu-

[fol. 54] lar services, which may or may not have any relation whatsoever to what would be a division out of a true rate.

The exhibit is, in our opinion, clearly irrelevant and immaterial, and we therefore ask that it not be received.

Mr. McCollester: Mr. Examiner, all that counsel says go to the weight to be given to the exhibit. It is certainly proper for us to compare, in determining what is the reasonable charge for the Hoboken service, what the defendant trunk lines themselves charge for switching services in contiguous territory.

We cannot do everything at once. If we do not prove any more than is shown on here, defendant can argue all they want that we have not proved enough to make this exhibit of any great weight, but that goes for the weight of it. It is certainly competent; it is relevant to show what their switching rates are.

Now, it may be another step would be to show what the services are, but we are certainly entitled to show their switching charges, as what they consider proper charges for them to publish for the switching movements.

Your Honor will know that Weehawken is adjacent to Hoboken at one end, and Jersey City on the other.

Now, I do not know where we could get any comparisons that would be more illustrative of what the trunk lines

[fol. 55] consider proper for switching movements than to take their own switching charges in their own territory, adjacent to ours.

Mr. Eshelman: Mr. Examiner, before you rule, might I make this further observation: that in our opinion this does go beyond the weight of the evidence, or the weight to be given, and our objection is that it is essentially incompetent for the reason that the introduction of these individual instances tend to put upon us the necessity of trying, you might say, other cases which are not truly divisions cases, and which amounts under circumstances could not necessarily be determinative of what would be reasonable divisions, and they are not all even in the New York district.

In other words, we must start in with each one of these items, presumably, and make—that is, come before this Commission with operating testimony as to what is here, to show that they are not appropriate.

Examiner Hoy: I will sustain the objection. I do not think the evidence is material, unless the company, by evidence showing some connections with relative services performed in the switching movements,——

Mr. McCollester: Well, Mr. Examiner, how are we going to prove our case if you rule out evidence at one point, unless we connect it up by evidence later? Now, we cannot prove everything at once. This is certainly relevant.

[fol. 56] Examiner Hoy: If you connect it up, I will just rule it out temporarily, until you are ready to connect it up. I do not see any materiality in just a statement of the charges without some showing of likeness of service, or greater service, possibly, but at least some connection of service, relative service.

Mr. McCollester: Well, isn't that, however, to the weight, rather than to the admissibility?

Examiner Hoy: I do not think it is material unless it has that. It is not material to this issue unless there is some connection there. I think it gets a little beyond the weight; I do not see where it is pertinent to the issue of what is a just, reasonable and equitable division of the Hoboken, merely by showing a switching charge up at Wilkes-Barre, Pennsylvania, with the Central of New Jersey charge.

Q. Now, Mr. Mathey, will you look at the fourth item on exhibit marked No. 6?

A. Yes.

Q. What do the initials H. M. stand for?

A. Hoboken Manufacturers.

Q. Does that mean that there is a charge made for switching cars, charge of $17.60 for switching cars from the Hoboken Manufacturers connection?

A. With the Erie Railroad.

Q. The Erie Railroad, to private sidings, at Weehaw- [fol. 57] ken, New Jersey?

A. On the Erie Railroad, that is correct.

Q. On the Erie Railroad?

A. That is correct.

Examiner Hoy: One hundred or three hundred or four hundred miles; I don't know.

Mr. McCollester: Mr. Examiner, that goes to the weight of the evidence, but we are prepared to show it.

The Witness: The maximum distance isn't—I am familiar with that territory—the maximum distance cannot be over a mile, and it is less than that. It is a good deal less than that.

Mr. Eshelman: Mr. Examiner, there has been no showing that the witness is competent to describe these movements. He may have a total movement in one place of a certain distance; that is to say, from origin to destination could be a certain distance, but that is no sign——

Mr. McCollester: We ask that the operating vice president of the Erie Railroad be produced here this afternoon to stand an examination of what are the services covered by these charges.

Will counsel for the Erie Railroad produce his operating vice-president this afternoon?

Mr. Pierson: Would you pay his expenses to fly down from Cleveland?

[fol. 58] Mr. McCollester: Will you produce a superintendent here this afternoon?

(Discussion off the record.)

Q. Mr. Mathey, how long did you work for the Erie Railroad?

A. 20 years.

Q. Did you live in New Jersey?

A. I did.

Q. Have you been around the terminals?

A. I have.

Q. Now, will you state how long that haul is between how long the switching movement is between the Erie Hoboken connection and the private sidings in Weehawken?

A. In some cases it isn't more than a few hundred feet; at the most it cannot be a mile because the distance from Weehawken to Jersey City is only a mile.

I might also say on that subject that the West Shore Railroad absorbs that switching charge of the Erie.

Q. So that that would come out of the line haul rates, just like the division of the Hoboken Manufacturers Railroad?

A. Correct.

Mr. Eshelman: Mr. Examiner, I still stand on my objection to this line of testimony so far as it relates to the charges out of rates which are not here involved in this proceeding.

[fol. 59] Examiner Hoy: I understand that, Mr. Eshelman.

Mr. Eshelman: And I still stand on the objection of incompetency of what is proposed to be developed by this exhibit, by Mr. Mathey's testimony.

Examiner Hoy: I still do not see much materiality to this exhibit.

Mr. McCollester: Mr. Examiner, of course, I am prepared to argue. I am sorry you are not impressed, and I trust that on reflection you will be, but I do think that the Commission can be assumed to have a little familiarity with New York Harbor. We have shown you a map of New York Harbor. I do not think the railroads will contend that it is one hundred miles from one section of New York Harbor to the other, and I think that even if we showed no more than the map, and what the charges are which they themselves make for switching service, that is relevant for purposes of comparison with what it would be reasonable for the Hoboken to charge for a switching service.

Now, Mr. Eshelman keeps talking about division of rates. I pointed out to your Honor in my opening statement, and Mr. Mathey has testified, and the Commission has found that the fact that Hoboken's compensation may be in the form of divisions of joint through rates is a historical accident, perhaps; that the service is a switching service, and the question is what its compensation for a switching [fol. 60] service may reasonably be, and I think that we

are entitled to show what compensation other railroads, the defendants, themselves, in the New York Harbor area, charge for switching services in the New York Harbor area.

Examiner Hoy: I will let the exhibit in as No. 6, if it is coupled up. It is at least coupled up in one instance in a general way.

Mr. Eshelman: And in that one instance, does that relate to the Hoboken Manufacturers item, the fourth item of the exhibit?

Examiner Hoy: Yes, that is the only one.

The Witness: I can give some more, if you want.

(Exhibit 6, Witness Mathey, received in evidence.)

Q. All right, Mr. Mathey, go right ahead. Tell all you know.

Mr. Eshelman: May I have my exception, please, to the ruling on this item?

Examiner Hoy: Yes.

A. The charge from the D. L. & W. connection at Croxton to industries——

Examiner Hoy: Which is that?

The Witness: The first one on the page, under the Erie Railroad. That is also a charge which is absorbed by the D. L. & W. Railroad.

The next one is—well, those are the only ones that I know, where they are absorbed by the road haul carriers.

[fol. 61] Q. And those that come out of the joint through rates just so much as division to Hoboken?

A. That is correct.

Q. Out of the New York Harbor rates.

A. There is one other one on the last page under the West Shore Railroad. It shows a charge from the Erie connection at Weehawken to the North Yard at Weehawken of the West Shore. That is absorbed by the Erie Railroad also under the provisions of its switching absorption tariff.

Q. Do you know how long that haul is?

A. In some cases, there, it is a couple of hundred feet, and in others, it may be a little longer. I do not know just exactly what the limits of their North Yard are.

Mr. Eshelman: I take it that there is no statement as to what traffic these charges would apply on.

The Witness: They would apply on all traffic with the exception of the—where I have limited it to a certain commodity.

Mr. Eshelman: They do not apply on coal, coke or iron ore, do they?

The Witness: No, I should have said they will not apply on coal, coke, or iron ore.

Mr. Eshelman: Do you happen to know what extent of these are paper rates?

The Witness: Well, I know a good many of them are not [fol. 62] paper rates. To what extent they are being used now, I don't know, of course.

Q. Are these charges paid on traffic to and from Seatrain?

A. What is that?

Q. On many of these charges, is traffic paid to and from Seatrains?

A. There are a few cases where the rates are on combination, where this would be used. The only case it could possibly be used on the Erie switching charges to their sidings at Weehawken, when coming from our connection at Weehawken.

Mr. Eshelman: Mr. Examiner, based on the witness' testimony, I submit that this has not been connected up, to show any pertinency here, and in addition to the points as to competency and relevancy. It has an absolute lack of materiality.

I therefore move to strike the testimony and ask that the exhibit be disallowed in toto.

Examiner Hoy: Well, the objection will be overruled. Note an exception for Mr. Eshelman.

Mr. Eshelman: Then, just to understand the scope of the admission, does the admission go to those other two items that Mr. Mathey——

Mr. McCollester: The admission goes to the whole exhibit.

Examiner Hoy: It goes to the whole exhibit.

[fol. 63] Q. In this connection, Mr. Mathey, what rates would be applied from Hoboken on the Hoboken Manufacturers Railroad to Jersey City on the Pennsylvania Railroad?

A. Well, the rates to be applied would be nothing but the published through class rates, or commodity rates, where some exist, applicable from Hoboken to Jersey City.

The class rates are on a scale beginning with 34 cents, first class, and running down to 9 cents on sixth class.

Q. How would such rates be divided?

A. If coming from an industry for team tracks on the Hoboken Manufacturers Railroad, that line would receive on fifth class traffic, for illustration, three point three (3.3) cents for one hundred pounds, which would leave 8.7 cents to cover the service from the Hoboken Manufacturers connection at Weehawken with the Erie to the delivery on the Pennsylvania Railroad in Jersey City.

Out of this 8.7 cents, or $1.74 per ton, the Pennsylvania Railroad would pay the Erie $1.05 per car, or about 5 cents per ton and would pay the New Jersey Junction 50 cents per ton, thus retaining for itself $1.19 per ton, or approximately 6 cents per hundred pounds.

These are the figures, I may say, out of the present rates.

Q. In the case of a similar shipment moving to Jersey City via the Erie, what would be the situation?

[fol. 64] A. The situation there would be that exactly the same rates would be assessed from Hoboken to Jersey City, but the Erie in that case would retain for its service $1.74 per ton, or 8.7 cents per hundred pounds.

Mr. Eshelman: These are fifth class rates?

The Witness: Fifth class rates, correct.

Mr. Eshelman: For what distance?

The Witness: Jersey City on the Erie from Weehawken, about a mile.

Examiner Hoy: What is the fifth class rate?

The Witness: 9 cents.

Mr. Eshelman: I thought you said——

The Witness: No, did I say—the fifth class, I haven't got the figures. Wait a minute; I have them in my brief case some place, if you want to know.

Mr. McCollester: That question is, which rates did you talk about?

The Witness: That should read sixth class traffic, I beg your pardon. This is just a mistake in copying.

(Discussion off the record.)

The Witness: It is the fifth class rate of 12 cents per one hundred pounds.

Q. Now, Mr. Mathey, are you familiar in a general way with the undertakings of the Trunk Line Railroads under their tariffs, and their methods employed by them in inter- [fol. 65] changing freight with various steamer lines in New York Harbor?

A. I am.

Q. Will you please explain briefly what the railroads under their tariffs undertake to do, and how the interchange is made?

A. Well, in the case of lighterage free freight, the railroads under their tariffs obligate themselves to place the freight at the side of a steamship, or on the steamship pier, and the freight is loaded or unloaded, as the case may be, at the expense of the trunk line railroads.

On non-lighterage free freight, of course, that is not done, and an additional charge would be made.

Take the case of a carload called lighterage free freight, coming in via the Erie and going to one of the steamer lines docking in New York Harbor. Upon arrival of the car, a notice is sent to the consignee or steamship line, advising of the arrival, and asking for disposition. In some cases the freight is held in cars on the Jersey shore, but in other cases, and my recollection is, in the majority of cases, the freight is unloaded by the carriers on the lighterage docks.

Upon receipt of disposition orders, accompanied by a permit from the steamship company, designating the time of delivery, the freight is picked up from the lighterage docks, loaded into a lighter, which lighter is then moved [fol. 66] either alongside the steamer where the freight is placed within the reach of the ship's tackle, or it is unloaded by the railroad and the lighter onto the steamer line docks.

This is the practice with the foreign business, but in the case of the regular coastwise lines, such as the Morgan Line, Clyde Mallory Line, the practice, according to my recollection, has been that the freight is not held by the carriers on the Jersey shore, but is delivered directly to the steamer, or to the steamer docks, although the steamer line would have the right to have the cars held for disposition.

Q. How much free time is allowed by the railroads awaiting disposition of lighterage orders?

A. That will vary. On export traffic, in connection with the so-called agreement lines, 15 days free dock is allowed. In other cases, ten days is allowed. On coastwise traffic, the free time allowance is five days.

Q. Are deliveries made directly by the trunk lines without the intervention of lighterage service to any steamship lines docking on the Jersey side of the harbor?

A. Yes.

Q. Will you give some illustrations?

A. The Dollar Line Pier at Jersey City is served by the Erie Railroad. This pier has tracks in the center of the pier which are divided up into forty foot sections. It is a [fol. 67] custom of the Dollar Line to call for particular cars for a particular section in accordance with the needs for stowing the vessel.

They will sometimes call for a number of cars delivered at one time, each car to be spotted in a particular section, or they will call for a single car for single delivery to a particular section.

Mr. Eshelman: May I interject to ask at which pier this is?

The Witness: Pier 6, Jersey City. I think that is the number of the pier, to my recollection.

Mr. Eshelman: Whose pier is that?

The Witness: Erie Railroad. Pier 9 it is, not Pier 6.

Q. In the case of a direct delivery by rail to this Dollar Line pier, who unloads the car?

A. The Dollar Line unloads the cars for which they receive compensation from the Erie of 3 cents per 100 pounds.

Q. Have you any other instance of direct delivery from rail to ship on the Jersey side?

A. The pier of the Arnold Bernstein line in Weehawken is owned by the Erie Railroad, but leased from the Erie by the steamship company. This line handles principally unboxed automobiles for export.

On this pier, as a part of the facilities, there is an elevator for delivery of automobiles to the steamer. The custom [fol. 68] of the Erie is to spot the cars containing the automobiles on the pier, and by arrangement with the Erie, the Bernstein Line unloads the cars and receives $6.00 per car, or the equivalent of about $1.00 per ton, for the loading and spotting to the car elevator.

A somewhat similar arrangement is in effect at the New York Central's pier at Weehawken in connection with the Black Diamond Line.

Q. In the case where a pier is served directly by the rails of certain trunk lines, do those trunk lines in some cases also make deliveries to the steamer by means of lighter rather than by direct rail to ship?

A. That happens in a good many cases, depending upon the wishes of the steamer lines.

Q. Do the trunk lines similarly make deliveries by lighter to steamship lines docking at Hoboken, including Seatrain?

A. They do.

Mr. Eshelman: May I interject to ask again the amount of the allowance to the Dollar Line?

The Witness: Three cents a hundred.

Mr. Eshelman: And the amount of the allowance to the Black Diamond?

The Witness: The Bernstein was $6.00.

Mr. Eshelman: $6.00 per car?

The Witness: Yes.

[fol. 69] Mr. Eshelman: Black Diamond is $6.00 per car?

The Witness: Yes.

Examiner Hoy: We will adjourn to two o'clock.

(Thereupon, at 12:55 o'clock p. m., a recess was taken until two o'clock p. m.)

Afternoon Session

Examiner Hoy: We will resume, gentlemen.

W. J. Mathey resumed the stand, and having been previously sworn, testified further as follows:

Direct examination (continued).

By Mr. McCollester:

Q. Mr. Mathey, at the recess, you had just described the undertaking of the railroads in making deliveries to steamships in New York Harbor. What is the situation as to the undertakings of the railroads under their tariffs, and their practices, at other North Atlantic ports?

A. They are the same, except, of course, the deliveries there as a general proposition are made by switching the

cars and unloading or loading, as the case may be, at the steamship piers.

In other words, I do not think the lighterage is indulged in—I know it isn't—as it is in New York, but the same obligations exist, shipside delivery.

Q. And under their forced rates, the railroads under- [fol. 70] take to unload the cars and place the freight within reach of ship's tackle?

A. That is correct.

Q. And that is true at Boston and at Philadelphia?

A. And Baltimore.

Q. And Baltimore. Now, going a little further afield, what is the practice of the carriers serving the port of New Orleans?

A. At that port there is a little different rate set-up. The rates to or from New Orleans on import and export and coastwise traffic may be divided into so-called shipside and non-shipside rates.

In the case of shipside rates, the carriers assume the obligation of making deliveries to the pier, and absorbing any necessary expense for switching, loading or unloading of the cars, and the tollage charges assessed by the New Orleans Dock Board.

In the case of non-shipside rates, generally the switching charges and in some cases, the tollage charges are absorbed, but in other cases, from local points in the southeast, for illustration, the Southern Railroads, in the case of non-shipside rates, do not absorb their connecting line switching, or the other accessorial charges.

Q. Would you make a comparison between the situation at New Orleans and that at New York in so far as the under- [fol. 71] takings of the line haul rail carriers are concerned?

A. I would say that the shipside rates at New Orleans are in the same category as the rates of the trunk lines which include free lighterage, and the non-shipside rates would compare with the rates of the trunk lines which do not include free lighterage.

Q. Now, what is the situation at Galveston?

A. At Galveston, Houston, and Texas ports, the situation is the same as it is at New Orleans.

Q. Well, then, is it a fair statement, based upon your knowledge of railroad tariffs, generally, that at least in the east, where rates are published as shipside rates to and

from the ports; the undertaking of the railroads is to load and unload the cars, and place the freight within reach of ship's tackle?

A. That is correct.

Q. And, similarly, if it is freight that has come in by vessel, the railroad takes the freight at the foot of the tackle; is that correct?

A. That is correct.

Q. And loads it into cars if that is necessary?

A. That is right.

Q. Now, as to whether the fact that the freight, or a considerable proportion of the freight interchanged to Seatrains, the freight is loaded on board in the cars—as to [fol. 72] whether that fact makes any difference in the nature of the carriers'—of the rail carriers' undertaking; I want to ask you a few questions:

Does Seatrain have a competitor, a water line operating to and from Cuba, which carries freight in cars?

A. It has.

Q. What is that line?

A. Florida East Coast car ferry Company.

Q. What is the arrangement for interchange of freight between Florida East Coast Car Ferry and the line haul railroad?

A. The Florida East Coast Ferry Company operates between Fort Everglades, Florida, and Havana, Cuba. The dock of the car ferry is served by the Fort Everglades Railway, which is owned by the Broward County Port Authority.

On export shipments, where rates apply to shipside, the Florida East Coast Railway absorbed the switching charges of the Fort Everglades Railway, which amount to $3.85 per car.

The railroad makes the necessary assortment of cars, and with its own locomotive places them in position on the car ferry.

In addition to the absorption of the switching charges, the Florida East Coast Railway makes an allowance of five cents per one hundred pounds, or $1.00 per ton to the [fol. 73] Florida East Coast Car Ferry Company, for so-called tollage at Fort Everglades and therefore, as a practical matter, the rail carrier absorbs $1.00 per ton, plus $3.85 per car for making deliveries to the ships.

Q. The rail carrier—by the rail carrier, you mean the line haul carrier?

A. Yes, correct. The allowance of five cents per hundred pounds is published in Item 133-A, supplement 16, the Florida East Coast Railway Company, ICC No. 892.

Q. Now, there are operating on the Great Lakes certain carriers that alive been held to be common carriers by water, which takes freight loaded in railroad cars.

Have you made an investigation as to the relation between the rail line haul carriers and such carriers?

A. I have.

Mr. Eshelman: Mr. Examiner, I should like to interpose an objection to this line of testimony, on the ground it is incompetent, irrelevant and immaterial for the same reasons as were indicated this morning.

Examiner Hoy: Go ahead, Mr. Mathey?

Q. Will you please state what you discovered?

A. At Milwaukee, Wis., the Chicago Northwestern Railroad Company performs all of the service for the Pere Marquette Car Ferry Lines, loading and unloading their boats both on through and local traffic, whereas, in connec- [fol. 74] tion with the Grand Trunk car ferry, the Grand Trunk Railway has its own power and performs all of its own service, both on local and on through traffic.

At Manitowoc, the Chicago & Northwestern performs switching for both the Pere Marquette and the Ann Arbor on both through and local traffic.

At Menominee, the Chicago Northwestern performs all switching on both local and through business for the Ann Arbor Car Ferry.

Where the Chicago Northwestern services the boats for the carry ferry lines, the compensation to the C. & N. W. is included in the switching charge on local business. On through business, where the service is performed by the railroad, its compensation is included in divisions accruing to that line.

At Port Burwell, Ontario, which is the Canadian terminus of the Pennsylvania Ontario Transportation Company, operating Ashtabula, Ohio and Port Burwell, Canada, the Canadian Pacific Railway does the necessary work of servicing the car carry, because the Canadian Pacific has joint ownership of the ferry.

The Ontario Car Ferry Company operates between Genesee Dock, N. Y., which is just north of Rochester, and Cobourg, Ontario. This car ferry is owned and operated under an agreement between the Ontario Car Ferry Com- [fol. 75] pany, the Canadian National Railway, and the Baltimore & Ohio Railroad.

The slips, trackage, and other equipment necessary to interchange cars at Cobourg are owned by the Canadian National, while similar equipment at Genesee Dock is owned by the Baltimore & Ohio.

All work in connection with the placing of cars on and off the ferries at Cobourg is performed by the Canadian National Railways at its own expense, and a similar situation exists at Genesee Dock with the Baltimore & Ohio Railroad.

The Car Ferry Company does not make any direct contribution to the interchange expenses, inasmuch as the ferry constitutes a portion of the through route, and divisions are so established as to reflect the expenses incurred by the rail lines in effecting interchange with the ferry.

Q. Is there anything further you want to say on direct examination?

A. That is all I have.

Mr. McCollester: You may cross-examine.

Examiner Hoy: Cross-examination.

Mr. Eshelman: Mr. Examiner, I think that I would like to ask for the affirmative cross-examination of this witness. It may be that there will be no cross-examination when we get to it, but I think we should like to have an opportunity to review the transcript in connection with his testimony. [fol. 76] Examiner Hoy: Just how long a time do you contemplate?

Mr. Eshelman: We had intended to ask at the conclusion of this hearing for about 30 days following the receipt of the transcript.

Examiner Hoy: Well, it is perfectly proper, I think, to defer cross-examination until tomorrow morning, or something like that, but you are to be expected to cross-examine this witness, if you are going to, before then.

Mr. Eshelman: May we consider it until that time?

Mr. McCollester: I have no——

Examiner Hoy: If you want to study his testimony, why, I am perfectly willing to grant a little time for you to do

that, but you will be expected to cross-examine—you or anybody else, of course,—before this hearing is over.

Mr. Eshelman: Then that will be deferred until tomorrow morning?

Examiner Hoy: You will be present tomorrow morning, Mr. Mathey?

The Witness: Yes.

Examiner Hoy: Witness excused. Next witness, Mr. McCollester.

(Witness excused.)

Mr. McCollester: Mr. Brush.

GRAHAM M. BRUSH was sworn and testified as follows:

[fol. 77] Direct examination.

By Mr. McCollester:

Q. Will you state your full name, please, Mr. Brush?

A. Graham M. Brush.

Q. Where do you reside?

A. Greenwich, Conn.

Q. You are president of the Hoboken Manufacturers Railroad, are you not?

A. I am.

Q. Are you also president of the Seatrain Lines, Inc.?

A. I am.

Q. Before you became president of these two companies, did you have experience in the steamship business, and if so, what?

A. I had experience in the steamship business for four years, with the Ward Line, the New York Cuba Mail Steamship Company, in the capacity as assistant to the president, and assistant to the receiver.

In those capacities my duties were about as broad as that of the president; it was being assistant to the president.

Q. Now, before we talk about the Hoboken, I want to ask you, based upon that experience with the Ward Line: What did you find the general custom to be at New York as to the interchange of freight between railroads and [fol. 78] steamship companies, and the services performed by each in accomplishing a change?

A. I found it to be exactly as Mr. Mathey has testified; generally speaking, that the great majority of rates on

export and import and coastwise traffic were at so-called lighterage free rates. The Ward Line pier was not served by any rail line. All traffic interchanged with the trunk lines was handled by lighters to and from the pier, and we ordered the lighters to either be put alongside of ship, within reach of ship's tackle, or we ordered the lighters to discharge on the string piece of the docks, onto the pier.

Those services were all performed by the railroads at their expense.

On traffic moving in the opposite direction, the same situation was true.

Mr. Eshelman: Will you permit an interjection to let me ask if, in connection with that testimony, you still make the distinction that Mr. Mathey made as to rates which called for shipside delivery and to those which did not, were not of the lighterage free type?

The Witness: As I just said, most of the rates were lighterage free rates. On certain traffic, the rates were made not to include free lighterage, and it was the expense of the shipper to make the interchange between the rail head and the steamship tackle, or vice versa.

Q. Now, Mr. Brush, as president of the Hoboken Manu- [fol. 79] facturers Railroad, are you familiar with the railroad itself and with its operations?

A. I am.

Q. Referring to the blueprint map, Exhibit No. 1, in so far as you want to do so, will you briefly describe the line of the Hoboken Manufacturers Railroad and describe the operations which it performs?

First, let me ask you this as a preliminary question: does the Hoboken Manufacturers Railroad own its right-of-way?

A. No.

Q. How does it hold that right-of-way?

A. Under a long-term lease,—under long-term leases between the Hoboken Manufacturers Railroad on the one hand, and the Hoboken Land and Improvement Company, and the Hoboken Railroad, Warehouse and Steamship Connecting Company on the other hand. Hoboken does own a small strip of land, on which it has a branch, but on its main right-of-way, the land is all leased.

Q. Those leases are, for the most part, leases dated in 1906, for a term of 99 years; is that correct?

A. That is correct.

Q. How long is the railroad, Mr. Brush?

A. The railroad is approximately a mile and a half long. It has about eleven miles of tracks.

Q. And what is its northern terminus?

A. The northern terminus is where it joins the Erie Rail-
[fol. 80] road, approximately on the line between the towns of Weehawken and Hoboken.

Q. It extends south along the Hoboken waterfront, does it not?

A. That is correct, it extends south along the Hoboken waterfront, serving the various industries and piers as shown on the map, down to the so-called shipping government piers.

Q. What equipment does it own?

A. The Hoboken owns two Diesel electric locomotives, one gasoline locomotive, a tank car, several flat cars, a snow sweeper.

Q. Portions of its operations are in streets used by the public?

A. Yes, from the point where the main line crosses 14th Street going southbound, until it runs off Hudson Street, between 10th and 11th, the tracks are operated through a public street.

Q. Are its operations essentially switching operations?

A. Yes.

Q. Now, will you describe in your own way the different operations which it performs?

A. The Hoboken has, or has had up to a few days ago, four classes of operations. It has the operation where, taking the incoming freight to the Hoboken to be switched to a team track or to an industry — where the obligation to unload the car does not rest on the Hoboken or its connec-
[fol. 81] tions.

The second class of traffic is to the steamship piers, most of which, as has been described, is lighterage free freight, and the Hoboken assumes the obligation of unloading the cars and placing the freight next to its tackle.

Then there is L. c. l. freight, which moves to the freight house, to and from the freight house, where it is unloaded or loaded, as the case may be, consolidated, as usual; and

the fourth class of traffic is that to and from the Seatrain ships.

Q. I do not want you to describe those operations yet. Just name what they are, the four different kinds of operation.

Now, first, on the general question of whether——

Examiner Hoy: Let us get those straight, Mr. McCollester. The first was what, Mr. Brush? Didn't that also include—"to be switched to a team track, or industry"—wouldn't that include outgoing freight from a team track or industry?

The Witness: Yes, that class does include both ways. I was going to describe both the incoming and outgoing operations.

Examiner Hoy: I just wanted to get your fourth class—to get your four classes. Your second class will be to the steamship piers, your third class is l. c. l., and your fourth class Seatrain.

[fol. 82] The Witness: Yes.

Q. Before you describe those individual operations, I want to ask one or two general questions, questions on general points: as to whether the railroad is economically operated, you have testified that its right-of-way is, with the exception of a small portion, leased.

What have you to say bearing upon the reasonableness of the rental paid under that lease?

A. In judging whether the Hoboken is an economic carrier, one of the large items of its expense is rent, it would seem to me, from the very beginning, when we were first considering purchasing the Hoboken—when Seatrain was first considering purchasing the Hoboken.

Whether or not it had a reasonable long-term contract with the landlord—I do not know any better way to say that I believe that contract as a whole, or those contracts, those rental agreements, as a whole, are reasonable than to say that the taxes on the property leased of the city of Hoboken and the State of New Jersey exceeds the amount of the rentals.

The rentals in those contracts are based on the provision that Hoboken will pay the taxes on the property in addition to the rentals, so that Hoboken pays either directly or indirectly the taxes on all the property which it leases, and

[fol. 83] that at the same time pays rent to the landlord on that same property.

In round figures, the rent amounts to $48,000. a year, and the taxes amount to $54,000. a year, from which, I think, any one can conclude that the taxes are either way too high, which probably they are,—but even if they should be double what I think they should be, I do not think that anybody should say that rental that was less than the taxes was an exorbitant rental.

Q. Now, does the Hoboken have the usual expense of a railroad for general overhead, for general officers' salaries?

A. Yes, to some extent. There are joint officers between Hoboken and Seatrain, and the amount of time these particular individuals have given to Hoboken is in fact not fully compensated.

The Seatrain naturally pays their salaries, and the Hoboken reimburses the Seatrain for a portion of it.

Q. Would you say, by reason of the fact that these same persons are also officers of Seatrain, that the expense that would otherwise have to be incurred by Hoboken is thereby reduced?

A. It was reduced. When we purchased the road, it was reduced.

Q. In other words, your expense for general officers' salaries are less than at the time you purchased the road?

A. That is correct.

[fol. 84] Q. Further, on this question of whether the railroad is economically operated, was there at any time a committee of trunk line railroad operating men appointed to study the Hoboken and to determine whether or not the trunk lines could make savings in its operations?

A. There was.

Q. When was that?

A. The committee was appointed in the Fall of 1933, after a meeting which I had with the seven or eight harbor lines' presidents, at which I asked the presidents of the various eastern roads that reached New York to make an investigation of the various matters that remained unsettled and are still unsettled over at Hoboken, and also in connection with the various matters in dispute between those roads and Seatrain; and as a result of that meeting, on October 19, 1933, two committees were appointed, a traffic committee

and an operating committee, to go into these various matters discussed.

I would say that it was my request that the Hoboken matters be dealt with on their own merits, and that the understanding which was arrived at between me and the president and confirmed later in writing, was the fact that such committees would deal with Hoboken matters on their own merits.

Q. By "on their own merits," you mean without regard to the attitude of the trunk lines toward Seatrain?

[fol. 85] A. That is correct.

Q. Were you in touch with this operating committee from time to time during its work?

A. I was in touch with the individual members; I was in touch with the sub-committee—did the actual detail work. I only had one meeting with the full committee, at which little or nothing was discussed, except when the traffic committee—except whether the traffic committee was going to fix the Hoboken's allowance, or whether the operating committee was going to fix the allowance. It was not up to me.

Q. Well, on the question, which is the only one I am asking you about at the moment, as to whether the Hoboken was being economically operated, what were the findings of that committee?

Mr. Eshelman: Mr. Examiner, at this point I should like to interpose an objection. It seems to me, from what the witness has testified, that what was done—it seems to have been pursuant to some suggestion that there might be a basis for arriving at an agreement or compromise of the differences of view of the interested parties.

It seems to me that from what has so far transpired, this is so close to a matter of compromise that it would be inadmissible under the rule.

Examiner Hoy: I have not heard anything about com-

[fol. 86] promise so far in the testimony.

Mr. Eshelman: Well, then, Mr. Examiner——

Examiner Hoy: He is testifying that a study was made.

Mr. Eshelman: Yes, but the study was made, as I understood the witness to say, pursuant to suggestions which had been made by him to the railroad presidents, with a view to developing the whole situation, to see whether they could compose the differences, and this study was made, as I understand this testimony, by the permission of the Ho-

boken that these men would go on the Hoboken Manufacturers Railroad to develop the facts.

Is that a substantially correct statement, Mr. Brush?

The Witness: Most of it is correct, but your point is wrong. The facts are that we had been doing business for one year with the Eastern Trunk Lines. We had been interchanging traffic to and from Seatrain ships. There had been no agreement whatsoever, and not one single meeting could we ever get out of you fellows, to ever sit down and discuss the matter of what the division should be, and I think it was subject to certainly a very strong complaint, which was made on my part to the Eastern Trunk Line presidents at that meeting, and when they heard about it, they did something.

Mr. Eshelman: And did they do that at your suggestion?

The Witness: I do not know whose suggestion it was. [fol. 87] The fact is that we had been doing business for a year, and you wouldn't even sit down with us.

Examiner Hoy: I do not understand that it was made so that something could be compromised. I understand the study was made with the idea that reasonable and proper divisions, I take it, and other things, could be settled, as a basis, of course, for fixing something,—not necessarily compromise.

Mr. McCollester: Mr. Examiner, if I understand the law on the point that I gather Mr. Eshelman is trying to make clear, it is that when a party has made an offer with an idea of compromise, that offer can not be used against the party, if it was made under circumstances clearly indicating the parties were negotiating for a compromise, but there is no evidence that that has been made here, and there certainly is no objection to testifying what the defendants themselves found as to the facts.

Mr. Eshelman: I was just wishing to make the point, Mr. Examiner, that from what has been said, it seems to me that what was done was so far in pursuance of seeing whether they could get together, that we submit it was all under the same rule.

Examiner Hoy: Whether you can settle something that is undecided between two parties does not necessarily, to my mind, mean compromise at all.

You may continue. Your objection, Mr. Eshelman, if it [fol. 88] is an objection,—

Mr. Eshelman: Yes, sir.

Examiner Hoy: is overruled.

Q. All right, Mr. Brush, on what the findings of the committee were, on the question of whether the railroad was economically operated——

A. The trunk line operating committee, sub-committee, I should say, that investigated the costs of the Hoboken, found that if the Hoboken should be operated by one of the trunk lines as a part of its line, the only savings that it could make would be its supervision, a little clerk hire, clerical expense, and in legal expense.

In other words, after looking the situation over very carefully, they could not find where we could save any money in operating that railroad. That confirmed a finding of Mr. Horace Stringfellow, of the Missouri Pacific Railroad, who spent considerable time in checking up on the Hoboken's operation and costs prior to the time the Seatrain purchased it.

We wished at that time to find out whether the Hoboken was an economic carrier, or whether it wasn't—whether it was being operated in an—operated efficiently or inefficiently; if we took it over, what we could do to keep it on a proper financial basis.

Q. And Mr. Stringfellow advised you that it was eco-
[fol. 89] nomically operated, then?

A. That is correct.

Q. And since then, you have reduced the general officers' expenses?

A. Yes.

Examiner Hoy: You did not say how much, Mr. Brush. Would you care to?

The Witness: I don't know. For the first year or so, we didn't charge Hoboken anything. In fact, I think that went on for three or four years, although the officers of Seatrain were spending a great deal of time in connection with this Hoboken trunk line controversy.

(Discussion off the record.)

Q. Now, Mr. Brush, I think that before I ask you to describe the switching operations in detail—strike that.

I will ask you: will you describe now the four operations, the switching operations involved in the four sorts of operations that you have referred to?

A. Taking first the incoming traffic from the Erie interchange to Hoboken, the day starts by the Erie, which is our own direct connection, rail connection, placing all incoming cars on the interchange track, which is the most westerly track of the railroad. It is parallel to Park Avenue.

Examiner Hoy: That is the interchange track of Hoboken?

The Witness: That is the interchange track of the Ho-
[fol. 90] boken with the Erie Railroad. So that Hoboken's work commences by taking the cars in that interchange, splitting those cars up, some to go down to the southerly end of its line, which we always referred to as south of 14th Street, the others to go north of 14th Street, two groups handled north of 14th Street.

There is the team track and the industry traffic, and there is the Seatrain traffic. There are three groups south of 14th Street.

Mr. Eshelman: Three south?

The Witness: Three south—team track, l. c. l. and steamship. Incidentally, there are also steamship operations north of 14th Street, I am sorry—three groups south, three groups north.

Now, in order to place cars on a team track, the railroad in the switch-out of that Erie interchange track—those cars which are to be placed on the team tracks north of 14th Street—they can be placed right on the team tracks. There is no order or time involved in connection with spotting the cars on these team tracks that are adjacent to the building "D" shown on the map.

In connection with the cars moving into the industries you will notice that there are several tracks going into the building, General Foods, and into the so-called Factory Terminal Building, which is listed on the map as Buildings D, E, and F.

[fol. 91] Those cars have to be sorted, not only for that building, but also many times, in the order in which they are to be placed.

There is no time involved there unless you run into a situation where the car has to be held out in the main yard until the bill of lading is received and then it can be spotted.

Q. By saying that there is no time involved, you mean, do you not, that the railroad can put that car in whenever it wants to?

A. That is right, it does not have to wait upon the orders of anybody. Now, in so far as team track traffic downtown is concerned, the finished team track—it does that same thing. There is no question of order of time. Team tracks are large enough so that the railroad spots all cars on a team track, and notifies the consignee to come and get it. But in so far as teamship traffic, other than Seatrain traffic is concerned, both north of 14th Street and south of 14th street, the situation is quite different.

In the first place, the tariffs, as Mr. Mathey stated, provide that the railroads shall hold the cars for varying lengths of time. That is in order to make a proper and efficient and proper interchange between the railroad and a ship. A ship may not be in.

So that the railroad holds the cars after such cars have [fol. 92] been switched out, on its main yard, unless it has an order from the steamship to bring the car down to the pier.

Now, there may or may not be a still further classification of this Steamship freight, depending upon the request of the steamship lines. It is the common practice everywhere in the United States, including New York, to deliver freight to steamship lines in the order in which they can load the ships.

In connection with Hoboken, that operation of delivering the car to the ship in the particular order is important, only when there is a large volume of freight to be moved. Then it becomes particularly important for any of the steam ship lines to get it in right order.

Now, in connection with the Seatrain traffic, the Seatrain cars are pulled out and left in cuts in the yard of the Hoboken, awaiting orders from Seatrain, just the way they were to await the orders of any other steamship.

Seatrain orders those cars to be delivered to it, usually in a particular order, with certain cars grouped. In other words, not every particular car is ordered in a particular number, but like any other ship, it needs its heavy freight to go into its hold, and its light freight to go onto its top decks.

At Hoboken, when the time comes to make the delivery, the Seatrain makes exactly—that is, goes through exactly [fol. 93] the same switching operations that it would to any of the other steamships docking at piers which it

serves, and it takes the Seatrain cars down and spots them on the so-called car cradle which you see labeled on the blueprint whereas, to the other steamships, it either puts the cars on the piers, if they have railroad tracks, or, if they haven't railroad tracks, put them at the base of the pier; in other words, the nearest point possible to the ship-side.

Then, depending upon whether the freight is lighterage free or not, if the freight is not lighterage free, Hoboken's obligations and services are complete; if the freight is lighterage free, then, Hoboken, either itself or at its expense, in connection with the other ships, other than Seatrain, unloads the car, places the freight next to ship's tackle.

In connection with Seatrain, Hoboken has a contract which we will describe later on showing where its services end and where Seatrain's begin in connection with this point of interchange between the Hoboken and Seatrain.

Now, in the reverse direction—well, I will continue on the incoming freight, because, after a team track car is unloaded, Hoboken then has to either leave that car there waiting for a load, or bring it back to its hold yard, or deliver it back to the Erie.

The same situation is true with the steamship freight [fol. 94] other than Seatrain; the same thing is true in connection with the industry freight; and I find that I have omitted l. c. l. L. c. l. freight is handled just the way it would be to an industry, except that the building in which the freight is to be unloaded is our building, and the unloading is at our expense.

Now, going to the four classifications, going from Hoboken to the Erie, a shipper who wants to load team track freight orders a car. If the car is there, it is used; if not, it is spotted. The shipper loads the car, turns the car over to the Hoboken loader, and Hoboken merely switches that car to the Erie interchange without any classification at all.

In connection with the l. c. l., after a car is made up, that car is switched to the Erie interchange without any classification.

In connection with steamship, freight other than Seatrain, again, the car is ordered, it is spotted, and depending on whether the freight is lighterage free or not, or at

freight tariffs—if not lighterage free, the steamship or the shipper, or the consignee, or somebody—it is usually the steamship—loads the car, and Hoboken, without any classification, hauls that car to the Erie interchange. If it is lighterage free freight coming in, Hoboken, either itself or by contract with either a stevedoring company or [fol. 95] a steamship—the steamship line contracts contracts to have that freight loaded into the car, and, upon being loaded, that car, too, is hauled to the Erie interchange track.

In connection with Seatrain, the cars come off Seatrain ships loaded, whether they are lighterage free or not, and, as I will describe to you later, the cars are eventually pulled from the Seatrain berth, Seatrain trestle. Those which are going out line-haul are pulled to the Erie interchange track; those that require other work are just pulled to the main yard, depending upon what the necessary work is. If it is team track, they are pushed into the team track.

Q. Now, Mr. Brush,——

Examiner Hoy: Just a second. Off the record——

(Discussion off the record.)

Examiner Hoy: Let us have a five-minute recess.

(Thereupon, a short recess was taken.)

After Recess

By Mr. McCollester:

Q. Have you any further comment on the switching operations in connection with Seatrain traffic?

A. Taking a car going to Seatrain, if Seatrain takes the car, there is obviously no return movement of the empty, either to a team track or a hold yard, or the Erie interchange. Vice versa, cars that come from Seatrain move to trunk lines—there is no spotting of the car at shipside [fol. 96] in order to load.

The other comments you will note on the map of the railroad, Exhibit No. 1, I believe, that there is shown a D. L. & W. float bridge. That bridge has just been installed, and interchange has just commenced. The same

operations would be done there as I have described in connection with the Erie interchange.

We must classify the freight in the four groups, and the problem is simpler because of the small volume. There is no difference per car.

Vice versa, traffic moving to the D. L. & W. would be spotted down in that yard, and interchanged with the float bridge, instead of being spotted on the Erie interchange track, as formerly. But as this operation has just commenced, none of my testimony will hereafter refer to it, as none of the figures, exhibits, or anything else have any bearing on this operation.

Q. By "this operation," you mean the operation in connection with the float bridge?

A. In connection with the float bridge of the D. L. & W.

Q. Now, Mr. Brush, dealing with switching operations alone, have you found it possible to determine any differences in the switching costs as between different switching operations performed by the railroad?

A. No. Taken altogether, all of our efforts to try to de- [fol. 97] termine the cost of team track switching versus the cost of steamship switching, or industry switching, or l. c. l. switching, or Seatrain switching—we have not been able to break down the switching costs. They are so alike as to be identical. There was about 99.9 per cent in the conclusion of the Trunk Line Operating Committee.

Q. Have you prepared, from the records of the complainant, an exhibit designed to show the switching costs of the complainant for the years 1936 and 1937 on all traffic?

A. I have.

Q. Is that an exhibit of one sheet?

A. Yes.

Q. Were the figures shown on the exhibit taken or computed from the records of the Hoboken kept in the regular course of its business, and have they been correctly taken where they are directly taken, and correctly computed where they are computed?

A. That is correct, the figures shown here are as reported to the Interstate Commerce Commission, and audited by certified public accountants, adjusted only by the elimination of items applicable to other years, and putting into the particular year those items which were picked up in

other years. That was necessary in order to get a true picture of the expenses for any particular year.

Q. What you just said relates to the figures in the col-
[fol. 98] umns headed 1936, and in the first two columns under the heading 1937; is that correct?

A. That is correct.

Q. Now, what about the figures in the last two columns under the heading 1937?

A. I don't understand your question.

(Discussion off the record.)

A. The last two columns for 1937 show the adjustment of items applicable to other years, and also, the figures are adjusted to show the cost per car and per ton of Hoboken, if the Hoboken-Seatrain original, contract had been in effect in 1937.

Mr. McCollster: Mr. Examiner, I will—

The Witness: For the whole year.

Mr. McCollester: I will say that we are coming presently to tell you about those different contracts. We cannot put in everything at once, but I think that when we do you will see what is meant here.

We ask that the exhibit be marked Exhibit 7 and received in evidence.

Examiner Hoy: Do you think it is necessary to explain it just a litle bit more?

Mr. McCollester: I am going to, Mr. Examiner.

Q. Mr. Brush, looking at the exhibit marked Exhibit 7, will you state how the exhibit was prepared, the method that was used in such preparation, bearing in mind that its pur-
[fol. 99] pose was to arrive at the cost, average cost of switching operations only?

A. Yes, this exhibit was prepared for determining the actual operating expenses applicable to the year 1936, as previously explained.

Q. Those are the figures in the first column?

A. $304,964.07.

Q. In 1936?

A. In 1936. Now, in order to determine the switching costs only, it was necessary to deduct any expense of Hoboken; in fact, any or all expenses of Hoboken for operations other than switching, so that we start out with the direct

cost of handling, which is all contained in the station employees handling account, under transportation.

In other words, if Hoboken had not handled any traffic, so-called lighterage free traffic, or l. c. l. traffic, the operating expenses would have been $133,634.36, other than certain incidental expenses as listed below.

For example, in connection with the loading and unloading of cars, there is paper lining, there is bracing, stripping, which Hoboken is obligated to supply.

Hoboken also has workmen compensation and public liability in connection with the account "Station Employees."

It paid taxes, Social Security and railroad retirement taxes, carriers tax, on those employees that were employed [fol. 100] for doing this work in connection with lighterage free freight and l.c.l.

So that those three items must also be deducted, as incidental to the handling.

The next item is an item whose costs are in Hoboken's operating expenses, but which is not Hoboken's traffic. Seatrain Lines has a certain volume of freight which it delivers direct to lighters at its own pier.

In order to make that delivery, a car must be moved from alongside of Seafrain ships, approximately 350 feet to the north, to the open end of the trestle, where lighters come alongside and the car is discharged into the lighters. That is not traffic of the Hoboken Manufacturers Railroads, and the pushing of that car down there, and other expenses, are performed by the Hoboken for Seatrain as Seatrain's agents, and Hoboken charges Seatrain its costs.

Those costs have been figured at $2.50 per car, and hence, the $1,860.00 which must be deducted represents 744 cars of such traffic handled during the year 1936.

On the next item that has to be taken into consideration, Hoboken has had other lines' cars under demurrage. It has received demurrage, and the receipt of that demurrage has compensated the Hoboken for its per diem expense while holding those cars, and therefore it was necessary for us to go back into our records to determine how much per diem [fol. 101] expense should be deducted where Hoboken has been reimbursed for it.

That figure has been estimated at $3,621.00.

So that these incidental items, after being deducted from operating expenses, less station employees, leaves a net operating expense for switching only of $124,842.25.

Now, to determine Hoboken's further costs, we must add to that the taxes, the rent, including per diem—that is your debit balance—and the net between miscellaneous rent income and miscellaneous rents, which items are as follows:

On the Miscellaneous rent income, that item is interest of six per cent. on Hoboken's investment, which it has made in connection with the so-called Seatrain Terminal, which it rents to Seatrain, and charges Seatrain six per cent.

The miscellaneous rents are rents which Hoboken pays for the property comprising a large part of its main yard, to the Hoboken Land & Improvement Company, which the Bureau of Accounts has directed be put into that account rather than with the other rent paid to our landlords.

The next item is rent for road and interest on debt.

Therefore, taking all items of expense of the Hoboken, after deducting items not applicable to switching, there was a total expense for the year 1936 of $229,478.50. The cars handled are shown, and the average switching cost per car [fol. 102] was determined by dividing the expense by the number of cars.

The number of tons handled is shown, and the average switching cost per ton is determined in the same manner.

The first two columns for 1937 are identical, except for variations in the expenses, to the first two columns of 1936, and I do not think require any further explanations.

The last two columns of 1937, you will see the figures are slightly different, and the difference in the figures is brought about by assuming that Hoboken had operated during 1937 under the original Seatrain contract during the year 1937. In fact, on March 1, 1937, Seatrain and Hoboken entered into a new contract, its present contract, and these last two columns are merely put down to show every one the effect of the change between the original contract and the present contract. The details of that will be shown in another exhibit.

Mr. Eshelman: Do the last columns, may I ask, relate to the present contract?

The Witness: No.

Mr. McCollester: The other way around.

Mr. Eshelman: The first two to the present contract under 1937?

Mr. McCollester: Yes, that is right.

Mr. Eshelman: Counting them as six columns of figures.

[fol. 103] Mr. McCollester: The first two columns under 1937 were actual figures based upon the first three months——

The Witness: Two months.

Mr. McCollester: —two months of the old contract, and ten months of the new; is that right?

The Witness: That is right.

Examiner Hoy: That is for 1937.

The Witness: That is the first two columns of 1937, and the last two columns for 1937 are to show what those figures would have been, what the costs would have been if the present contract had not been entered into.

Mr. Eshelman: Oh, I see.

Q. Now, Mr. Brush——

Examiner Hoy: Before he leaves this, Mr. McCollester, Mr. Brush, would you explain "Taxes, less amount billed Seatrain"?

The Witness: Yes, Mr. Examiner, obviously, if Hoboken's taxes were $50,000, but it had rented some property to John Jones, and as part of that rent, had charged John Jones $7,000, representing its tax expense, Hoboken should not in any cost figures put in the $50,000; it should put in the $43,000, and that is what we have done here, because Seatrain leases certain property from the Hoboken on which the Hoboken pays taxes, and is reimbursed by Seatrain in the form of rent.

[fol. 104] Examiner Hoy: Now, one other thing: Rent Road and Interest on Debt—the Interest on Debt, particularly—what does that mean? I presume that is your annual payments to the companies from which you lease the property.

The Witness: That is right, landlords.

Examiner Hoy: What is interest on debt?

The Witness: Hoboken has a debt, and it pays interest on its debt. In other words, it has no bonds; it has notes.

Examiner Hoy: Proceed.

Mr. McCollester: Are there any other questions on the exhibit, Mr. Examiner?

Examiner Hoy: No.

The Witness: I should like to add that all of Hoboken's property is not rented; it owns a considerable amount of property, and its debt is in connection with that.

Examiner Hoy: With the property it owns?

The Witness: With the property it owns. It has an investment, as we will show you by a balance sheet, of a considerable amount of money in items that are not rented.

(Exhibit 7, Witness Brush, received in evidence.)

Q. Now, Mr. Brush, did the Trunk Line Operating Committee, or sub-committee, as you called it, make any investigation as to the costs of Hoboken's switching operations, and make any findings as to those costs, and if so, what did they find?

[fol. 105] Mr. Eshelman: I take it that my objection, your ruling and my exception still stand as to this?

Examiner Hoy: It can be so understood.

A. The Operating Committee, sub-committee report, the committee that made the studies, determined certain figures. Whether I have them all I do not know, but I do know several, and in one of those figures they found the cost of team track traffic, before interest and taxes to be 62.8 cents per ton, and their determination per ton cost for interest and taxes was 30 cents.

That, however, was in error, they having used the book figures without taking into consideration the adjustments or other year taxes. It should have been 33 cents.

However, the Trunk Line Committee found the team track cost to be 92.8 cents per ton.

Q. With reference to the question of whether the Hoboken Railroad continued operation is desirable, did this same trunk line committee make a study and determination as to the cost of handling freight to and from Hoboken by lighter instead of handling it by rail and switching via the Hoboken Manufacturers Railroad?

A. Yes, they did.

Q. They do embody the figures that they arrived at as to the lighterage costs on an exhibit?

A. I have.

[fol. 106] Q. Is that the exhibit which I show you, with the caption "Freight Lightered by Trunk Lines to and from points on the Hoboken Manufacturers Railroad"?

Mr. Eshelman: May I interject to ask whether this relates to costs in connection with any rates which are here to be divided?

The Witness: Are you asking me?

Mr. Eshelman: If I may. I am perfectly willing to accept an answer from counsel, if you prefer.

Mr. McCollester: Let the witness answer.

The Witness: The answer is yes.

Mr. Eshelman: May I just add this additional question, then: Is Hoboken Manufacturers here asking permission to prescribe divisions on traffic which comes to it by lighter, as distinguished from that which comes to it from its connection with the Erie?

Mr. McCollester: Now, I am afraid, counsel does not understand. These figures are the costs—are what the trunk line committee determined it would cost the trunk lines to make deliveries at Hoboken by lighter, instead of through switching operations employing the Hoboken Manufacturers Railroad.

The Witness: In so far as it goes.

Mr. McCollester: Yes.

Mr. Eshelman: Then I object to it, your Honor, on the [fol. 107] ground that it has nothing to do with the division of rates which are here involved. It is therefore incompetent, irrelevant, immaterial.

This is on traffic moving over a totally different route, as I understand it, from that which is here involved. It is not, apparently, any cost of Hoboken; it is supposed to be a cost to the railroads.

Mr. McCollester: Mr. Examiner, I have just two things to say on that. In the first place, on counsel's theory, you cannot determine what may be a reasonable division for Hoboken by comparing it with anything. The determination must be made in a vacuum.

Of course, that isn't so. Now, in the second place, this is relevant both as showing the value of the Hoboken service to the trunk lines, as compared to what it would cost them to reach Hoboken by lighterage, and in that same connection, it is relevant as bearing upon the desirability and the public interest of the continued operation of the Hoboken, which, I assume, may be pertinent here.

In other words, the point is this: we cannot, I think, ask that the trunk lines pay divisions to the Hoboken sufficient to keep the Hoboken alive if the trunk lines are in a position to make deliveries to points served by the Hoboken more cheaply in some other way.

Examiner Hoy: Is that the purpose for which you are [fol. 108] putting it in?

Mr. McCollester: And we are offering this to show they cannot make deliveries in any other way more cheaply than through the Hoboken Manufacturers Railroad. We are also going to show that this being the cost of lighterage, it is an indication of what the railroads would have to absorb, and a measure of what they would have left out of the rates if they performed the service this way rather than by the Hoboken.

That is saying the same thing another way.

Mr. Eshelman: May I just add one other point before your Honor rules: By the exhibit itself, it indicates that it relates to 1933, which is not 1936 or 1937. In the next place, if I understand counsel, this relates to what the cost would be, or would have been then, or an estimate of what the cost would have been then, if performed.

I do not understand, from what has been said, that it was the actual cost of what was done, and certainly do not understand that it purports to be an estimate of what the actual cost would be now.

It seems to me that it is wholly immaterial, as well as being incompetent and irrelevant.

(Discussion off the record.)

Mr. Eshelman: Does this mean, then, that the Erie delivered 958 cars in this period of January to September, 1933 [fol. 109]—delivered 958 cars to the Hoboken Manufacturers Railroad by lighter?

The Witness: No.

Mr. McCollester: What does it mean, Mr. Brush?

Mr. Eshelman: I thought you said it was actual.

The Witness: No, this exhibit shows that the Erie Railroad lightered to and from points on the Hoboken Manufacturers Railroad 958 cars in the nine months. Hoboken Manufacturers Railroad never touched the traffic, never saw it. They lightered it.

Q. Now, Mr. Brush, these figures were compiled by the trunk line operating committee in connection with their study of Hoboken, isn't that right?

A. That is correct.

Q. And their study as to what the division should be of Hoboken?

A. That is correct.

Q. And what do you understand was their purpose in making these figures shown on Exhibit 8?

A. Exactly as you have stated, to the Examiner. In summary, the trunk line said, before arriving at a division with Hoboken, they must determine Hoboken was being efficiently operated, and that they couldn't make deliveries any way cheaper.

That is very pertinent because obviously, as you have [fol. 110] said, if they could lighter for ten cents a ton, and Hoboken was asking $1.00 a ton to do the same work, they could do for ten cents, it would be an unreasonable position for Hoboken to take.

On the other hand, if Hoboken costs were less than it would cost them to perform the service in some other way, without Hoboken, then the conclusion would be that Hoboken's allowances or divisions would be reasonable.

Mr. Eshelman: Mr. Examiner, since the witness has straightened me out on the facts, I think that reduces my objection to the point that this is incompetent as evidence of what Hoboken's division should be, on the ground that the mere fact that this cost that much money does not mean that they would be entitled to this much, or something else.

Examiner Hoy: I understood that was not the purpose of the exhibit, from what Mr. McCollester said—to determine what the division should be. If so, I do not see where it is material or pertinent, what the lighterage costs are, in determining what the divisions over a railroad should be.

Mr. McCollester: Well, Mr. Examiner, I tried to say that I had two purposes in this exhibit: one, to show that we are justified in asking the trunk lines to pay the divisions which we seek, because they are less than it would cost the trunk lines to make deliveries at Hoboken by lighter, on their own figures.

[fol. 111] Examiner Hoy: It is less than it would have cost the railroads in 1933 to make deliveries?

Mr. McCollester: That is right, on their own basis of their own figures; and the other point is, Mr. Examiner, that if the railroads are willing, as they are, to deliver 3,595 cars by lighter to Hoboken at a cost to them, on their own figures, of $26.00 per car, or $1.59 per ton, so that the net revenue left to the trunk lines out of those rates to Hoboken is that net revenue less this lighterage cost, then we say that it will be unreasonable for the trunk lines on traffic going to Hoboken by rail to receive out of those same

rates revenues which will allow the Hoboken only 60 cents a ton.

Mr. Eshelman: It is that very point to which my objection goes.

Examiner Hoy: I think myself that the cost in 1933 is not material to what divisions should be at the present time—because of lighterage in 1933 not material evidence as to what just, reasonable and equitable divisions of rail rates should be at the present time.

Mr. McCollester: Well, Mr. Examiner, I do not think that you have any proof before you yet that costs are different in 1933 than they are now. I think you are jumping at a conclusion.

I also ask you to bear in mind, Mr. Examiner, that we [fol. 112] are asking a finding as to the past.

Examiner Hoy: Yes, but your complaint was filed in 1936.

Mr. McCollester: Yes, but we ask a finding as to the past since 1932. I would also ask you to bear in mind, Mr. Examiner, that this whole case is simply bringing to a head for determination by the Commission negotiations which the trunk lines have prolonged since 1932.

They prepared these figures themselves, and we are certainly entitled to show what they considered in 1933 to be their costs.

Mr. Eshelman: Mr. Examiner, if I might perhaps introduce a subject which should have been covered at an earlier time—I perhaps misunderstood counsel this morning; that is, as my colleagues told me during the noon period—Mr. Counsel had asked for a finding of the Commission antedating the filing of his complaint.

I just wish to make the formal reservation on the record of our point, that the Commission is without jurisdiction so to do.

On this point, without standing——

Examiner Hoy: Well, I do not anticipate that the Commission will make such a finding, even though Mr. McCollester requests it. I do not anticipate they will.

Mr McCollester: On that, Mr. Examiner, we are short [fol. 113] cutting, and I think properly. If we went to court first, the court would call on the Commission for a finding.

Now, we are coming to the Commission first, realizing that the Commission cannot make an order, but if we pro-

ceeded in court, we would be referred by the court to the Commission for a finding, and we are asking the Commission to make that finding here.

Examiner Hoy: Well, it also raises the question of why you did not file your complaint in 1932, rather than wait until 1936.

Mr. McCollester: That is very true, and we will tell you all about that.

Examiner Hoy: Well, I don't know, of course, what the Commission will do, but I do not anticipate that they will make such a finding.

Mr. McCollester: We will tell you why we did not file our complaint in 1932.

Examiner Hoy: I will admit the exhibit. It is probably relevant, but I do not see the materiality of it to the issues here, no particular materiality.

Mr. Eshelman: Mr. Examiner, I do not know what your practice may be, as I do not wish to be taking exceptions continuallly, but could it be understood, to the extent that objections are made and overruled, that we would like the record to note an exception?

[fol. 114] Examiner Hoy: Yes, every time you can ask to have the record note an exception.

Mr. Eshelman: I meant that I would avoid doing that.

Examiner: Well, we will not have any general rule, because we do not anticipate you are going to ask for an exception in each and every instance.

(Exhibit 8, Witness Brush, received in evidence.)

Q. Mr. Brush, is a substantial volume of traffic delivered to Seatrain by lighter by the trunk line railroads?

A. Yes, there is quite a litle tonnage handled between Seatrain and the trunk lines by lighter. Hoboken Shore Railroad does does not handle it at all.

There were 744 cars of Seatrain lighterage freight, part of which was delivered to the trunk lines, as shown in exhibit 7, in 1936, and also the 1937 figures are shown.

Q. And where is that freight delivered to Seatrain by the trunk line lighters?

A. Seatrain's pier.

Q. At Hoboken?

A. At Hoboken.

Q. All right.

(Discusion off the record.)

Q. Now, in comparison with figures on Exhibit No. 8, can you state what the average absorptions of the trunk lines for rail delivery to the Hoboken were?

[fol. 115] A. (To the reporter.). Will you read the question, please?

(Question read.)

A. I think it would be easier to take each individual road, such as the Central New Jersey. If those 301 cars would come around via the so-called Belt, there would have been an absorption of 15 cents for the National Docks, 45 cents for the West Shore, 95 cents a car for the Erie, which, as I will show later on, if it had been Seatrain traffic, would be equal to 3 cents plus Hoboken's allowances.

Now, Hoboken's allowances are fixed with respect to all traffic other than Seatrain. Seatrain allowances are subject to determination. The actual charges which Hoboken made in 1937 on Seatrain traffic to the trunk lines were 94.8 cents per ton, so that if you will add 15, 45, 3, and 95, you will get $1.58 for the Central New Jersey.

Do you want me to go down through each one, or do you want to pick just two or three more?

Q. I would just pick two or three more.

A. Well, let us take the Pennsylvania Railroad. There would be a charge of 45 cents to the West shore, 3 cents for the Erie, and 95 cents for what Hoboken claims it is entitled to on Seatrain traffic, or, $1.43.

Of course, the Erie would only pay, say 95 cents. The New York Central would pay approximately 98 cents. The Lehigh Valley, I think, is the same as the Pennsylvania. [fol. 116] The D. L. & W.—they have had several arrangements—I think we had just better omit it.

Examiner Hoyt: In other words, it costs more to send it over the Hoboken than this cost figure for the Lehigh Valley; is that right?

The Witness: That is correct.

Q. Now, Mr. Brush, starting with the average figures for switching costs shown on Exhibit 7, and also with the facts, testified to by the witness Mathey, that 50 cents is the established allowance or division of the Hoboken on freight which is simply switched by you, I want to come to the question—to some of the facts upon which we claim that Hoboken is entitled on Seatrain traffic to more than

this figure of 60 cents, representing only the compensation for switching, as we contend.

Mr. McCollester: In that connection, Mr. Examiner, of course, I would ask you to recall the testimony that has been offered as to the undertaking of the railroads in interchanging freight with water lines, where that freight moves under lighterage free, or shipside rates.

Q. First, Mr. Brush, let me ask you: In order to equip itself to provide a terminal for Seatrain, did the Hoboken have to have a crane upon its property?

A. Yes.

Q. Did it have to rearrange its facilities to any extent?

[fol. 117] A. Somewhat.

Q. Have you had photographs made for presentation here showing visually some of the operations involved in interchanging freight with the Seatrain as the basis of your testimony on that subject?

A. I have.

Mr. McCollester: Mr. Examiner, we ask that these seven photographs be marked together as one exhibit.

Examiner Hoy: Exhibit 9.

(Exhibit 9, Witness Brush, received in evidence.)

Q. Mr. Brush, referring to the photographs, exhibit 9, will you describe to the extent that you care to, the difference between the operations involved in interchanging freight, between a railroad, or between the Hoboken and Seatrain, or between the Hoboken and a break-bulk carrier, assuming you have covered the switching operations in your previous testimony?

A. You are speaking now of actual physical operation?

Q. That is right.

A. Well, in the majority of instances, cars coming from Hoboken to Seatrain are spotted on the cradle opposite Seatrain's ship, and there the crane picks up the cradle with a car on it, lifts it, transfers it, and lowers it away into the hold of the ship, where the car is hauled off, the cradle returns to the dock.

[fol. 118] Likewise, in the majority of instances, cars coming from Seatrain to Hoboken are discharged from the ship by means of this cradle, and the car delivered direct to the Hoboken Manufacturers Railroad without unloading.

there to be switched to either team tracks of Erie interchange, or wherever the freight is going.

There are, however, instances where, for many reasons, the cars are not delivered by Hoboken with seals intact, nor are they delivered by Seatrain to Hoboken with seals intact. Loading or unloading, the whole or in part, takes place on a considerable volume of the traffic.

For example, take a case of a car of sugar, coming in from Cuba. The shipper or consignee may instruct that that car be unloaded, as Seatrain's rates on sugar are similar to its competitors' rates—in other words, delivered not in cars but out of cars—and the shipper may then say to Hoboken, "Load a part of that sugar into another car, consolidate it with some other sugar, which I have in other bags or other makes, and ship that sugar out."

In those cases Seatrain actually unloads the car. Hoboken actually loads the car.

Now, that same operation takes place in whole or in part due to orders of the customer. It could take place in whole or in part on orders from various governmental agencies, as well as shippers and consignees.

[fol. 119] There are also instances, particularly where freight is coming to Seatrain, where the car is unloaded in whole or in part at the order of Seatrain.

For example, Seatrain's tariffs provide it can handle a certain size car, or a certain weight car, and the trunk lines deliver a car that is beyond that size or beyond that weight those cars must be unloaded in whole or in part—those cars move on through bills of lading, so that we feel that the obligations are definitely that of the line haul carrier, to pay the cost of unloading the car; whereas, the cost of loading the car was definitely Seatrain's.

If it wants to carry it in a car, and wants to load it, it is up to them.

Now, take, for example, a commodity like flour. We no longer handle any flour through in cars. It is all unloaded and reloaded. That is due to the instructions of the shipper, who wants the flour rehandled.

It so happens that if you put the flour in a car and take it from a cold climate to a hot climate, or vice versa, and it is in the car for a period of a few days, if it is new flour, and it is not handled, it will cake and deteriorate, so that Seatrain, in handling flour in competition with the break-

bulk lines, must in fact handle the flour if it is going to make a good delivery as a part of its transportation, and [fol. 120] the shipper instructs Seatrain, and Seatrain in turn instructs Hoboken to unload the flour, and Hoboken does unload the flour.

Now, there are times when Seatrain wants cars unloaded for its own convenience, so that there are many cases where the traffic, where the freight is in fact loaded or unloaded at Hoboken in connection with Seatrain's service.

Now, it has been Hoboken's position that on all such traffic, the obligation to do whatever handling is necessary is that of the rail carriers and not of the Seatrain. The tariffs so provide, as we understand them.

Q. That is, freight that moves under——

A. Lighterage free rates.

Q. —lighterage free rates?

A. On the other hand, we have billed the trunk lines when the freight has been handled, exactly in accordance with the divisional arrangement; where lighterage free freight has been loaded or unloaded by Hoboken or at its expense, it is moved in connection with Seatrain, and with the exception of one rail carrier, they have all refused to pay.

Q. Now, that freight that is loaded or unloaded is freight on which the divisions come within the language of the existing divisional arrangements; isn't that correct?

A. That is correct.

Q. And the trunk lines on that have refused to pay in accordance with the established basis in their own tariffs; [fol. 121] is that correct?

A. That is correct.

(Discussion off the record.)

Examiner Hoy: We will adjourn until tomorrow morning at ten o'clock.

(Whereupon, at four o'clock p. m., September 19, the hearing adjourned until ten o'clock a. m., September 20, 1938.)

[fols. 122-123] Docket No. 27630

Hotel New Yorker
New York City, New York,
September 20th, 1938,
at 10:00 o'clock A. M., D. S. T.

Met pursuant to adjournment.

Before:

Examiner Hoy, Interstate Commerce Commission.

Appearances:

Same as previously noted.

[fol. 124] Examiner Hoy: We will resume, gentlemen. Continue Mr. Brush.

GRAHAM M. BRUSH recalled as a witness, having been previously duly sworn, testified further as follows:

Direct examination (continued):

By Mr. McCollester:

Q. Mr. Brush, when we adjourned yesterday, we had come to the point of taking up another angle of this situation, and I want to ask you to outline in your own words—describe in your own way the negotiations which Seatrain went through for a terminal at New York, telling with whom those negotiations were, and what happened during the course of the negotiations, and what the final result was.

Mr. Pierson: Well, I object on the ground it is not material or relevant to the issue in the case.

Examiner Hoy: What do you exect to prove by that, Mr. McCollester?

Mr. McCollester: We expect to prove, Mr. Examiner, several things. We expect to prove that some payment to the Seatrain for establishing its terminal in connection with some railroad was part of the negotiations from the beginning.

We expect also to prove the reasons which led the Ho-[fol. 125] boken to enter into this contract with Seatrain,

which is one of the circumstances, I think, bearing upon the propriety of the payments under the contract.

Examiner Hoy: I do not see where it is pertinent as to divisions of joint rates as to negotiations which Seatrain went through for a terminal.

Mr. McCollester: Well, Mr. Examiner, we are discussing the divisions of rates on Seatrain traffic.

Examiner Hoy: True.

Mr. McCollester: And the question is what payments made by a railroad are proper payments to be made in handling that traffic, and it seems to me that the negotiations which led up to the existing contract which certainly is material to the case, are——

Examiner Hoy: Existing contracts between Seatrain——

Mr. McCollester: And Hoboken.

Examiner Hoy: —and Hoboken?

Mr. McCollester: That is right.

Examiner Hoy: How is that material itself, right now?

Mr. McCollester: Well, may we proceed, and I think that as we proceed you will understand why they are material.

I may also say, Mr. Examiner, that I think that it is very material to the issues in this case to show the attitude of the Trunk Lines during this entire situation, as bearing upon the reasonableness of their divisions.

[fol. 126] Examiner Hoy: I do not see how the attitude of the carrier has any bearing on what is a just, reasonable or equitable division of a joint rate.

Mr. Pierson: I submit, Mr. Examiner, the complainant ought to submit the contracts, and let them speak for themselves.

Mr. McCollester: I think it is entirely proper to show the circumstances under which the contracts were made, Mr. Examiner.

Mr. Pierson: I think we ought to have the contracts in evidence first.

Mr. McCollester: You will have the contracts in evidence in due course, but we propose to put our case in our own way.

Examiner Hoy: Are you going to put in the contracts?

Mr. McCollester: We are going to put in the contracts.

Examiner Hoy: That Seatrain made with Hoboken?

Mr. McCollester: That is right, Mr. Examiner.

Examiner Hoy: Now you are going to show the negotiations which led up to those contracts?

Mr. McCollester: Which led up to those contracts, that is right.

Examiner Hoy: You may proceed.

A. In 1931, as an officer of Seatrain, together with Mr. Joseph Hodgson, another officer of Seatrain, we took up with the individual trunk lines of New York the question of establishing a Seatrain service out of New York.

[fol. 127] Two roads had shown particular interest prior to that time in Seatrain's service, namely, the Erie and Pennsylvania Railroads. Each of those roads had sent men to our terminals, at New Orleans, and Havana, and we had had numerous discussions with representatives of those roads.

When Seatrain's plans were a little further along, the negotiations took more definite form, and various locations were selected around the harbor by the Erie and Pennsylvania.

We also had a proposal from one of the contract terminals——

Q. In Brooklyn?

A. No, not in Brooklyn, in Staten Island, at that time—to dock Seatrain ships at their waterfront—one of their waterfront properties.

In all these discussions, Seatrain had taken the position with the railroads, upon the establishment of the Seatrain service. In interchanging freight between the rail lines and Seatrain ships, it was a part of Seatrain's invention, and a part of Seatrain's investment in its invention, and constituted a means whereby, in certain instances, material savings could be made in interchange, and Seatrain was willing to utilize its invention and its investment so as to [fol. 128] make those savings, and we felt that those savings should be divided on a fifty fifty basis.

Q. By savings, you mean savings in the expense of interchanging freight between a railroad and a water line?

A. That is correct. In other words, to be more specific, if a water line should invest in certain equipment, either in a terminal or in ships, or a combination of terminal devices, and especially constructed ships, it is possible—in fact, it is very frequently done by the steamship lines—to make

savings in this interchange, provide better service for rail and water.

Seatrain had done the same thing, only it had gone a little bit further than many of the other water lines.

Now, the reason we felt that these savings should be divided between the rail and the water line was because we felt that it would be of advantage to both carriers, primarily to Seatrain, to encourage the railroads to work with Seatrain.

It would give them ways and means to help the competition with our route, rail and Seatrain route, versus truck and water route, or barge and water route.

If their costs of interchange were less, in connection with Seatrain vessels, then they were in connection with other vessels——

Mr. Pierson: Mr. Examiner, I object to this line of testimony. I think it is purely argumentative.

[fol. 129] Mr. McCollester: I think it is not at all argumentative, if your Honor please.

Examiner Hoy: I think that you can go ahead and give the details, that is, an outline of the negotiations leading up to the contracts, and then you are going to put in the contracts. I do not think we need those negotiations in such detail as have been given.

Mr. Pierson: He is merely stating what their views and contentions were.

Mr. McCollester: Well, we cannot state everything at once, Mr. Examiner, and I think we would get on best if we can go ahead. It is not going to be too long.

Mr. Pierson: Well, all right.

A. (Continuing.) In these discussions we had, that principle was recognized, and there was no objection——

Mr. Eshelman: Mr. Examiner, it seems to me that that is objectionable—to talk about discussions, and what principle was recognized.

Mr. McCollister: I will ask him this question on that.

By Mr. McCollester:

Q. Mr. Brush, in your discussions with the Trunk Line railroads for a terminal at New York, was your position

made clear to them by you that you have just outlined, proposing a division of the savings and interchange costs?

[fol. 130] A. Yes.

Q. So far as the negotiations progressed, was any exception taken by any Trunk Line official at that time to such a proposal?

Mr. Eshelman: I object to the question, your Honor, on the ground that whether or not it be the fact, it has nothing whatsoever to do with the matter here to be determined. It looks to me like we are getting into——

Examiner Hoy: I agree with you, Mr. Eshelman. I do not see the pertinency of such a question and answer to this case, Mr. McCollester.

Mr. McCollester: Mr. Examiner, I think the pertinency is this: that we will show presently, if permitted to continue, after these negotiations with the Trunk Line fellow looking toward a terminal—the possibility of a terminal on one or another of the trunk lines' own facilities, Pennsylvania Railroad suggested that Seatrain should seek a terminal on the Hoboken Manufacturers railroad.

That was done. When Seatrain came to make its arrangements with the Hoboken Manufacturers' Railroad, those arrangements were made upon the basis of dividing the saving in interchange between the Hoboken and Seatrain. That is the payment which is provided for in the contract which enters into Hoboken's costs.

Now, I think that it is very pertinent and very proper for [fol. 131] us to show that so long as we were negotiating with the Trunk Lines for a terminal on one of their properties, that they made no objection to such a payment.

Mr. Eshelman: Mr. Examiner, it seems to me that essentially the case here is one brought under the Statute to determine what is a reasonable division. I do not understand that there is a contention here that some alleged position taken by the Pennsylvania Railroad alone can be invoked either as an estoppel against it, when the Commission is determining what are reasonable divisions.

Moreover, it couldn't possibly operate as an estoppel, even if against the Pennsylvania, certainly not against other lines here, which are asked to pay that same amount, or pay whatever is reasonable.

It seems to me we are getting a good bit afield.

Examiner Hoy: I think so too, and I am going to sustain your objection, Mr. Eshelman. I do not see where it is pertinent to the question before the Commission,—as to what was in the minds of the Pennsylvania, the Erie, or Seatrain, around 1931, in those years, as to the divisions of any savings because of what is claimed to be a more economical method of interchange, so far as the divisions of these rates are concerned.

I will sustain the objection.

Mr. McCollester: Well, Mr. Examiner, I would be glad [fol. 132] to be advised what is considered pertinent to a divisions case. As I read the Act——

Examiner Hoy: I do not mind, as I said in the beginning, a short history of the negotiations leading up to it—to the entering into these contracts that you are going to put in evidence, but when they are questions as to what position particular railroads took as to divisions of savings or claimed savings at that time, or what was in Seatrain's mind, I do not see where that can be used as evidence to determine what just, reasonable and equitable divisions of these joint rates are.

Mr. McCollester: Well, Mr. Examiner, let me put it this way. If it is considered that the costs of the Hobcken Manufacturers' Railroad are pertinent, and I think they are, we have indicated to you already, and will show you more fully later that one of the costs of the Hoboken Manufacturers' Railroad is payments made by it to Seatrain.

Now, that payment is the rub between us and the Trunk Line Railroads, and has been from the very beginning, as to whether that is a payment which Hoboken can include in its costs for the purposes of determining what its division should be.

There has been no contention in all of the negotiations, as we will show you, that if that is a proper cost, Hoboken's costs were not as we will show.

[fol. 133] Now, in order to show the Commission that that payment is a proper payment, it seems to me that it is entirely proper to show that some such payment was contemplated in the negotiations to be made by the Trunk Lines themselves to Seatrain, when the negotiations were under way there; that that was carried over when Hoboken, at the suggestion of—or, rather when Seatrain, at the suggestion

of the Pennsylvania, entered into arrangements for a terminal at Hoboken.

It may be somewhat by way of anticipatory rebuttal, but we are trying to put before you the entire controversy here in so far as it is within our information, and it seems to me that as justification for the present contract, we are entitled to show that a payment similar to that provided for in the present contract has been in contemplation and was in contemplation in the negotiations with the defendants themselves.

Mr. Eshelman: Mr. Examiner, if I might just add a word, it seems to me that from what counsel has said, that he has made it very clear that the information which he seeks to elicit from the witness relates not to negotiations between Seatrain and Hoboken leading up to the contract between Seatrain and Hoboken, but it virtually seek to make other lines, trunk lines, virtually parties to that arrangement by estoppel.

[fol. 134] It seems to me that is clearly objectionable.

Examiner Hoy: Well, I do not see the pertinency of it. I will adhere to my ruling and sustain the objection.

Mr. McCollester: May I have an exception, Mr. Examiner?

Examiner Hoy: Have the record note an exception to the ruling.

Mr. McCollester: Now, Mr. Examiner, under your ruling would you mind indicating what is ruled out?

Examiner Hoy: The last question, which is what was objected to, and the answer to it.

By Mr. McCollester:

Q. Now, Mr. Brush, I assume that the Seatrain did not locate its terminal on the properties of one or the other of the trunk lines with whom negotiations were had, as you have just been describing.

Mr. Eshelman: I object to that question as part and parcel of the same thing.

Mr. McCollester: Well, now, wait a minute.

Mr. Eshelman: The record shows you have a terminal down here on the Hoboken. I thought that is what we are dealing with.

Examiner Hoy: I do not see any objection to that question.

The Witness: Will you read the question again, please?

[fol. 135] Examiner Hoy: Read the question.

(The question was repeated by the reporter.)

A. No. Seatrain didn't locate its terminal there.

Q. How did Seatrain come to locate its terminal at Hoboken?

A. It seemed very essential to Seatrain that it should have access to all of the trunk line roads reaching New York Harbor, at reasonable switching rates or rates between the trunk lines and whatever terminal Seatrain located upon.

It was recognized that if Seatrain should locate a terminal upon one particular road, and all other roads had to use that road in order to get Seatrain's terminal, the lack of reciprocal switching charges in New York Harbor—it raised a great many questions, and it seemed that the more logical thing to do would be for Seatrain to locate upon some, what we might call, neutral property like a contract terminal, and hence avoid all the issues that would be raised if we should locate our terminal at a particular on the property of one particular road.

Therefore, Seatrain took up with the Hoboken Manufacturers' Railroad the question of locating its terminal there.

Q. Who suggested the Hoboken Manufacturers' Railroad to you as a possibility?

Mr. Eshelman: I object to the question, your Honor. I do not see what possible bearing it can have upon this.

Moreover, apparently, from what counsel has intimated, [fol. 136] it seeks to——

Examiner Hoy: I sustain the objection. I do not see where that is pertinent.

Mr. McCollester: Exception, Mr. Examiner. It would appear that the subject of these divisions is to be tried in a complete vacuum, without any information before the Commission as to what has gone before, without anything bearing upon the reasonableness of the contract, without anything bearing upon the reasonableness of the attitude of the Trunk Lines in refusing to pay Hoboken more than sixty cents, which is all they have been willing to do.

I submit the Commission is entitled to full information in determining—after all, the question is what is a fair division between the parties, considering all of the circumstances.

Now, I think that when you are dividing rates, the Commission has got to consider all the circumstances bearing upon what is fair to the respective parties, and you cannot ignore, the Commission cannot ignore whatever may be the conduct of the trunk lines that has led to the necessity for bringing the case.

Examiner Hoy: I do not see how you can determine just, reasonable and equitable divisions of these rates based on what the attitude of the Pennsylvania Railroad was in 1931 or 1932.

[fol. 137] Mr. McCollester: Mr. Examiner, is it not pertinent——

Examiner Hoy: There are other railroads interested, as well as the Pennsylvania.

Mr. McCollester: Very true, but is it not pertinent, so far as the Pennsylvania is concerned——

Examiner Hoy: No, I do not think it is.

Mr. McCollester: May I finish my question—the Pennsylvania, in some of the negotiations which have followed—the attitude has been taken,—well, it was no affair of the railroads where Seatrain did locate, and it is no concern of theirs what happens to the Hoboken Manufacturers' Railroad.

Now, I think that so far as the Pennsylvania is concerned, we are entitled to show that it was the Pennsylvania's own suggestion that led Seatrain to consider the Hoboken as a possible location for its terminal.

Mr. Eshelman: Mr. Examiner, may I say——

Examiner Hoy: I do not see where that is helping this divisions case. The Pennsylvania may have suggested, but Seatrain established its terminal, and the fact that somebody suggested it—that it established it at a particular place, and it was established there—I cannot see the pertinency to such evidence in this divisions case.

Mr. McCollester: Well, Mr. Examiner, does it not, in your mind, bear upon the reasonableness of a payment [fol. 138] made by the Hoboken to Seatrain, that Seatrain first negotiated directly with the Pennsylvania Railroad for a terminal on its land; that those negotiations were upon the assumption that there would be a payment to divide the savings and costs; that it was at the suggestion of the Pennsylvania that the Hoboken was considered as a terminal; and that that same arrangement which was

the basis of the negotiations with the Pennsylvania was entered into with the Hoboken.

Isn't that pertinent, so far as the Pennsylvania is concerned, in determining what is fair as between the parties?

Examiner Hoy: It might be considered as to the Pennsylvania, but you have a divisions case here between all the railroads.

Mr. McCollester: Well, we ask that it be considered as against the Pennsylvania, then, which is a defendant here.

Mr. Eshelman: I would like to answer, then, if that is the proposition: In the first place, it is my understanding—it was my hope that we were going to determine a divisions case along the lines that the Commission will have to decide it, as I understand it, under the Statute, with reference to the relative amount and cost of service, and other pertinent factors.

I certainly had hoped that we were not to try this case [fol. 139] on the basis of emotion.

Mr. McCollester: We are not asking—

Mr. Eshelman: There has been too much of that in the past.

Mr. McCollester: I quite agree, Mr. Examiner, we are not trying it on the basis of emotion. We are trying it on the basis of what is fair as between the parties, considering all of the circumstances, and considering the Hoboken's costs.

Now, Hoboken's costs include payment made by it to Seatrain. Is it fair that that should be included in its costs? Is it fair as between the Hoboken and the Pennsylvania, that that payment should be included in Hoboken's costs?

Now, I think that it is showing that it is fair at least as between the Hoboken and the Pennsylvania. We are entitled to show these circumstances which led up to the contract under which those payments were made.

Mr. Eshelman: Mr. Examiner, if I might observe, it seems to me that complainant is indicating considerable doubt about the basis of its claim, when it has to resort to matters of this sort.

In the first place, even as to the Pennsylvania, the information couldn't possibly operate. From what counsel has stated, this was apparently in the nature of advice, if it

[fol. 140] was given—I don't know what was given, what was said, if anything was said, but assuming, as counsel says, it would be in the nature of advice,—suppose a man gives advice—does that mean that he is estopped forever after to have the law determine according to what the law is?

As we understand it, even if we had been parties to a contract, that could not possibly affect the extent of the railroad obligation to make delivery.

Isn't the question here much more deep, much more the legal one as to where the railroads' obligation runs, and how could that possibly be determined by any such question?

Moreover, the complainant is not here asking one allowance or division from one trunk line, and another for another, and it certainly is the rule——

Mr. McCollester: Maybe we would.

Mr. Eshelman: Well, you haven't so far.

Examiner Hoy: I think that is enough, Mr. Eshelman.

(To the reporter): What was that last question?

(The last question was repeated by the reporter.)

Examiner Hoy: I sustain the objection.

Mr. McCollester: Exception.

Examiner Hoy: Have the record note an exception.

By Mr. McCollester:

Q. Mr. Brush, was the proposal that some payment by way of dividing the saving in interchange should be made by the railroads a condition which Seatrain made clear to [fol. 141] railroads other than the Pennsylvania in their negotiations?

Mr. Eshelman: May I have that question, please?

(Question was repeated by the reporter.)

Mr. Pierson: I object. There is no showing that the defendant carriers ever accepted any such condition.

Mr. Eshelman: I would like to add to that that counsel has indicated that he was going into this to show—to explain the extent of the contract itself; that is, the negotiations coming up to the contract.

Now, the contract apparently is the contract between Seatrain and Hoboken, to which these trunk lines were not parties.

Therefore, it seems to me the question is clearly objectionable.

Examiner Hoy: Well, to state my position briefly, I do not see where it is pertinent in the divisions of these rates to introduce evidence showing what was in the minds of Seatrain or the railroads, in or around 1931, as to how some proposed or claimed saving should be divided, and I will sustain the objection.

Mr. McCollester: Exception.

By Mr. McCollester:

Q. In your negotiations with the railroads for a terminal —by railroads I mean—strike that question.

[fol. 142] With what railroads, Mr. Brush, did you discuss and have negotiations regarding a terminal at New York?

Mr. Eshelman: I object to the question, your Honor, on the grounds previously stated—the grounds that the question is obviously not limited to the contract which is here today introduced.

Examiner Hoy: It seems to me, Mr. McCollister, your witness has previously testified that he discussed that with the Erie and the Pennsylvania, and that afterwards, he located his terminal on the Hoboken Manufacturers. I do not see any use in going into further questions as to whom he had the discussions with towards the location of the terminal, when we have already gotten to the point where he has located on the Hoboken Manufacturers.

Mr. McCollester: Well, I wanted to bring out that he discussed the location of the terminal with other railroads than the Erie and Pennsylvania.

Mr. Eshelman: That is the very point my objection went to, as having nothing to do with the contract that is here to be——

Examiner Hoy: It is immaterial as to with whom he had negotiations.

Mr. McCollester: Well, I am prepared to argue that.

Examiner Hoy: He has his terminal located now. We have gotten that far.

[fol. 143] Mr. McCollester: I am prepared to argue the materiality of it, Mr. Examiner, but I have to make a record now in order to have the basis of my argument, and hence I am going to ask some questions.

Now, I understand your Honor may overrule the questions.

Examiner Hoy: You objected to that question, Mr. Eshelman?

Mr. Eshelman: I did.

Examiner Hoy: The objection is sustained.

Mr. McCollester: (To reporter) Will you read that last question?

(The last question was repeated by the reporter.)

By Mr. McCollester:

Q. Now, Mr. Brush, assuming for the purposes of this question only that you had the discussions with other trunk lines than the Erie and the Pennsylvania for a terminal at New York, was it a condition of those negotiations that there should be a payment to Seatrain by way of dividing the saving in the cost of interchange?

Mr. Eshelman: I object to the question on the ground that it is leading, and also on the ground previously made as to the other questions.

Examiner Hoy: The objection is sustained.

Mr. McCollester: Exception. I assume the objection is not on the ground it is a leading question. I want the record clear on that.

[fol. 144] Examiner Hoy: No.

By Mr. McCollester:

Q. If, Mr. Brush, you had discussions with all or a substantial number of the trunk lines regarding location of your terminal on the properties of one or the other of them, and if it was your condition to them in the course of those negotiations that there should be a payment by them to Seatrain, was any exception ever taken by them to that condition during the course of the negotiations?

Mr. Eshelman: Objection on the same ground as heretofore stated.

Examiner Hoy: The objection is sustained.

Mr. McCollester: Exception.

By Mr. McCollester:

Q. In these negotiations with the several trunk lines, were you informed by them that they made payments to

steamship lines for special facilities furnished by the steamship lines, which resulted in savings in the interchange of traffic between the railroads and those steamship lines?

Mr. Eshelman: I object to the question, your Honor. Complainant itself has undertaken to show from the testimony of its traffic witness what is done at various other places over quite an extensive area, in fact, and as far as———.

Examiner Hoy: The objection is sustained, Mr. Eshelman.

[fol. 145] Mr. McCollester: Exception.

By Mr. McCollester:

Q. Now, Mr. Brush, will you describe your acquisition of—your negotiations for a terminal on the Hoboken Manufacturers' Railroad?

A. Seatrain took up with Mr. Milbauer and Mr. Diener of the Hoboken Manufacturers' Railroad the question of locating a terminal on that road.

Q. At that time—let me ask you, by whom was the Hoboken Manufacturers Railroad owned, if you know?

A. The Hoboken Manufacturers Railroad was owned by P. W. Chapman. He owned all the common stock and all the preferred stock. There were bonds outstanding in the amount of about $1,250,000.

Mr. Pierson: In the hands of the public?

The Witness: In the hands of the public. Of course, an inspection was made of the properties of the Hoboken, and it was found that it was entirely feasible and practical to dock Seatrain ships there, and our discussion then led into the making of a contract between the Seatrain and the Hoboken Manufacturers Railroad.

By Mr. McCollester:

Q. Just let me interrupt a minute, Mr. Brush. In the interests of complete accuracy, is it not a fact that the stock of the railroad was actually owned by the Hoboken Railroad & Terminal Company, whose stock was owned by Chapman? It is immaterial.

[fol. 146] A. That is correct. In other words, Chapman had a parent corporation, which in turn owned the stock of the Hoboken Manufacturers Railroad, and he owned

the stock of the parent corporation. It has nothing to do—that parent corporation, mind you, has nothing to do with the so-called Stevens Estate property, namely, the Hoboken Land and Improvement, or the Hoboken Railroad, Warehouse and Steamship connecting company.

Mr. Eshelman: What was the name?

Mr. McCollester: Hoboken Railroad Terminal.

The Witness: I don't know what it was. If you are interested, we will look it up.

Mr. McCollester: Hoboken Railroad Terminal. That is immaterial.

The Witness: There are just two major points about these negotiations: one, Seatrain took the position that if it docked its ships on the Hoboken, the Hoboken would benefit by a very substantial increase in traffic.

It had been having a hard time, we knew, and needed more traffic.

We were not familiar at that moment with the financial conditions of the Hoboken. Seatrain took the position that therefore, it if was to supply facilities to be used in interchange, that the Hoboken should make a contract with Seatrain, the same as they did with the other water lines at [fol. 147] Hoboken, and contract with Seatrain to make the interchange.

In other words, we insisted upon the usual practice of the rail carrier contracting with a steamship line to actually make the interchange in connection with its own loading and discharging operations.

By Mr. McCollester:

Q. And making a payment to the steamship line for performing the service?

A. And reimbursing, obviously, the steamship line for whatever work it did, for whatever facilities it supplied, in order to perform that work in conjunction with her own loading and discharging operations.

Q. And at that time you were dealing with the officers of the Hoboken Manufacturers' Railroad Company when it was an entirely separate corporation from anything in which you or Seatrain had an interest; is that correct?

A. That is correct, we had no thought or desire at that time to buy a railroad.

Now, in discussing with Mr. Milbauer and Mr. Diener this question of a contract, they showed us their arrangements or told us of their arrangements with other water lines, and how much they paid them, and they told us what their conditions were with the trunk lines out of which they paid the steamship lines.

The thing we were most interested in, of course, was the division of $1.35 on lighterage free freight. It was our con- [fol. 148] ception at that time that Seatrain freight would be lighterage free freight, practically one hundred per cent.

Q: Well, you assumed that the divisional arrangement providing for the $1.35 division was in terms which applied to—which would apply to Seatrain traffic; is that correct?

A. That is correct. In other words, to take it another way: on freight which is not lighterage free, Hoboken did not contact with any steamship line to interchange freight. It wasn't their obligation.

So that freight just didn't come into discussions.

There is no obligation on the part of the Hoboken to load or unload, or make any interchange at all on the steamship lines.

Examiner Hoy: I think your answer is complete on that, Mr. Brush.

The Witness: Therefore, the discussions which we had, which I want to make entirely clear, were on the basis of Seatrain's freight being lighterage free freight, and Hoboken's allowance being $1.35, and we insisted, and the Hoboken management accepted the proposition that they would advise the trunk lines of a reduction in their voluntary reduction in their allowances on Seatrain freight to $1 per ton, thereby giving the trunk line a saving of 35c [fol. 149] per ton on every ton of traffic moving to and from Seatrain vessels, versus vessels of Seatrain's competitors and other water lines at Hoboken.

When we came to the question of putting in these facilities——

By Mr. McCollester:

Q. Before you come to that, did your negotiations also contemplate a payment by Hoboken to Seatrain, and what was that payment?

A. Yes, I failed to tell the balance of the story. As Hoboken was paying the steamship lines varying amounts at varying times, but in the neighborhood of somewhere from sixty-five cents to seventy-five cents per ton, the arrangement was for the Hoboken to pay Seatrain forty cents per ton, but the forty cents per ton was to cover something more than the loading and unloading of the cars, or any other checking or bracing, and so forth and so on.

Seatrain also insisted, because of its experience at New Orleans, and at Havana, that the gasoline locomotive which has been found to be the most efficient means of bringing cars alongside of Seatrain vessels or taking them away, should be operated by Seatrain lines.

Now, for—the reason for that is that occasionally—I am glad to say not very often, but occasionally the interests of the United Lines of Havana, or of the New Orleans and lower coast are in conflict with those of Seatrain in [fol. 150] connection with this interchange of operations, and as a result, sometimes the loading or discharge of Seatrain vessels has actually come to a stop for a matter of a few minutes or an hour or two, waiting for a locomotive service.

So that we insisted that Seatrain operate that gasoline locomotive, so as to assure continuous loading and discharging operations of Seatrain vessels, our time in port being limited, and this forty cent payment to Seatrain, therefore, was for that last part of the switching service to or from the ship,—the last part of the switching service to the ship, or the first switching service from the ship, that also to reimburse the train for its investment and its expenses in connection with this interchange.

Q. Now, right there, Mr. Brush, let me ask you this: Seatrain's invention is patented, is it not?

A. That is correct.

Q. And that patent is a combination patent relating to the use of a crane or some sort of elevating device, a cradle to be lowered to a track, or raised and lowered into a vessel, and a vessel in the interchange of cars between a vessel and a railroad; is that correct, in general?

A. Well, I wouldn't give you any aid on your patent law but—yes, it is a combination patent.

[fol. 151] Q. That is what I mean.

A. In other words, it is not a vessel, it is not a terminal, it is not a crane; it is a combination of various devices which, when all put together, form the Seatrain terminal and ship.

You cannot separate it. You cannot say that it begins at any one point. It is the whole thing, from the beginning, from the dock and the crane and the ship, going right straight through.

Q. Now, the Hoboken Manufacturers' Railroad could not, even though it had a crane, use that crane for interchanging cars with a steamship in the manner in which cars are interchanged with Seatrain, without permission under the patent, could it?

A. No, no one could.

Examiner Hoy: Aren't we getting into patent law now?

Mr. McCollester: We are, Mr. Examiner, and I think it is pertinent.

Mr. Eshelman: Might I have that question and answer?

By Mr. McCollester:

Q. Now, neither could the Hoboken Manufacturers Railroad achieve the savings in interchanging freight with Seatrain or any other steamship line in the manner in which it is interchanged with Seatrain, without the use of the patent, could it?

[fol. 152] A. No.

Q. Nor handle an increased volume of freight to be transferred between railroad and ship in a manner resulting in those savings, without the consent of the holder or licensee of the patent; is that correct?

A. Well, if I understand your question correctly, you are asking me to say whether, back in 1932, or the latter part of 1931, when we were negotiating with Mr. Milbauer and Mr. Diener and they were looking for additional traffic that in so far as Seatrain was concerned, they couldn't have had the additional traffic without the use of the patent?

Q. That is right.

A. Is that the question?

Q. That is the question.

A. No.

Q. And they couldn't have had the use of any other additional traffic to be handled in the same way, without the use of the patent, could they?

A. No.

Q. And the license under the patent is held by Seatrain, is it not?

A. Yes, and Seatrain pays substantial royalties, and those rates were based on this particular—one of the major considerations was this ability to do things cheaply, cheaper than somebody else could do them.

[fol. 153] Q. And was part of the consideration for this proposed payment of forty cents, as it was originally, the use of Seatrain's patented device?

A. Certainly, because it is a part of Seatrain's costs. Seatrain wasn't going to go around and give its patents, on which it was paying royalties, to somebody for nothing.

Q. Now, at this time—when you were negotiating with the officers of Hoboken Manufacturers' Railroad, when it was entirely independent of your company, were the terms of the proposed arrangement, as you have indicated it, agreed to by them?

A. Yes.

Q. And then what happened?

A. They turned around, asked us for the money to rearrange their facilities in order to carry it out.

Q. Then what did you do?

A. We immediately inquired into the finances of the Hoboken, to see whether it was a proper thing for Seatrain to do, to advance the money. We found that the bonds, I believe, between the time we started negotiations and at that point, had gone into default, interest had not been paid, and the road was in fact without funds; so then the question immediately arose, regardless of what money Seatrain might lend—was it secure? Could they accomplish, either with financing—could they accomplish the results and carry [fol. 154] out the contract?

That led into a thorough survey of the Hoboken situation. Discussions with the Stevens Estate, which is the Hoboken Land & Improvement Company, and their affiliated company, the Hoboken Railroad, Warehouse and Steamship Connecting Company—

Q. They are the landlords of the railroad?

A. They are the landlords of the railroad, and we found that the landlords of the railroad were very much disturbed

over the condition of the road, and realized that they were going to lose their rentals, and would unless something was done to save that road.

We also found that although the road was established in the early first two or three years—well, 1901, 1902; it might have been 1898, but somewhere around through there—there was something over there that they might have called a railroad—but in 1906 the Hoboken Manufacturers' Railroad came into existence as a switch line, and a long term lease entered into between the railroad and the landlords, which we have described before, so the landlords were very much concerned about the situation, and when they heard about Seatrain's proposal to come and dock its ships there, realizing that the volume of traffic which it could add could save that road, they in turn joined with us to see what could be done to straighten out the finances of the Hoboken [fol. 153] and after various discussions with Mr. Chapman, who was the real controlling interest, and Mr. Diener and Mr. Milbauer, Mr. Chapman decided to let the road go into bankruptcy, clean out, that he could see no possibility of his ever retaining any, or getting any financial return out of the situation. It was a mess.

The road actually went into bankruptcy, and the securities were put up on public auction, and Seatrain purchased the securities.

I do not recall whether we purchased the parent corporation's securities, or whether we purchased the Hoboken Railroad's stock direct.

Q. Well, without being technical as to the details, the result was that you acquired the ownership of the stock of the railroad?

A. Right, and cleaned house on all these other corporations, and brought it right down in 1932 to just the Hoboken Manufacturers' Railroad.

Q. Of which Seatrain then owned all the stock except the directors' qualifying shares?

A. That is correct. Now, in these discussions with the landlord, it was perfectly apparent that a considerable amount of money had to be put in to put the road in financial condition, and carry it on until traffic could be put on it, so that in substance, Seatrain and the landlords went into [fol. 156] an arrangement where we went fifty-fifty on the necessary financing of the road.

Mr. McCollester: That, Mr. Examiner, is the subject of a finance proceeding before the Commission. I cannot give you the reference to it at the moment.

The Witness: That arrangement, however, was to last for three years, during which time we expected to have the road on its feet, and could pay off the landlord and Seatrain.

By Mr. McCollester:

Q. Let me ask you, Mr. Brush, as to the need of additional financing. In order to provide a terminal for Seatrain, the Hoboken had to reconstruct its so-called trestle, did it not?

A. Yes, it had to spend some money on the trestle.

Q. And it had to rearrange its tracks serving that trestle?

A. That is correct, the volume of freight to be handled over that trestle, as anticipated, would be such that the tracks needed to be arranged just the way you would rearrange any tracks if you were to have a large volume of traffic coming through a particular point—for example, the D. L. & W. float bridge.

Q. And it had to provide a crane to be used in connection with Seatrain ships under the patent, in handling the cars, did it not?

A. That is correct, but I don't want that question to give [fol. 157] anyone the impression that the actual structure of the crane itself, the value of the crane itself, have we ever considered to be anything but a part of a normal steamship terminal.

In other words, the crane and the trestle is leased to Seatrain just the way the railroads lease their terminals with cranes and overhead gear, and so forth and so on, to steamships which dock at their terminals.

I wanted to distinguish that; although the crane happened to be patented, or, at least, the crane happened to be a part of the patent, the crane itself is not patented. It is merely a part of a steamship terminal.

Examiner Hoy: We will take a five minute recess.

(Whereupon, a five minute recess was taken.)

Examiner Hoy: We will resume, gentlemen.

By Mr. McCollester:

Q. Mr. Brush, you had reached the point where Seatrain had acquired the ownership of the stock of the Hoboken Manufacturers' Railroad.

Then what happened, so far as this case is concerned?

A. To get our dates straight first, Seatrain purchased that stock—I believe the exact date was April 26, 1932.

In so far as the issues in this case are concerned, Seatrain officers had been doing negotiations with Hoboken, then became Hoboken's officers, and as such, we went to the trunk lines and proposed a division of one dollar a ton, as we had [fol. 158] discussed with the Hoboken Management prior to Seatrain's acquisition.

That was in the summer of 1932. There were no formal meetings, and at that time there was no doubt or question in our minds as to the reasonableness of such a division for the Hoboken.

Q. That was to be $1 a ton on all Seatrain freight?

A. $1 a ton on all Seatrain freight. The first indication of any dissent as to that proposal——

Mr. Eshelman: May I hear the prior portion of that answer?

(The answer as far as it was stated was read by the reporter.)

A. The first indication that we had that the trunk lines might be opposed to an allowance of $1 a ton came in the middle of September, when the trunk lines notified Seatrain——

Examiner Hoy: 1932, is that right?

The Witness: 1932. They didn't want Seatrain to take the cars. That was first and unofficial notice, and then it was official.

By Mr. McCollester:

Q. I think that was the end of September, 1932, Mr. Brush?

A. About somewhere in the latter part, at least. Just several weeks before Seatrain's service was to start.

It was after the ships were launched. The ships were [fol. 159] delivered within three weeks after they were launched. That break has been the matter of discussions

in previous Seatrain cases, and I do not think we need t go any further with that, but Hoboken, being the subsidiar of Seatrain at that time, was then brought into the co troversy or controversies which have since arisen betwee the trunk lines and Seatrain.

However, Seatrain's service started on October 6, 193 and freight was interchanged between the Hoboken an Seatrain without any arrangement as to divisions betwee the Hoboken and the trunk lines.

A month or so later, we were informed that the trun lines took the position that the existing divisional arrang ment, the then existing divisional arrangement was appli cable in connection with Seatrain traffic.

That divisional arrangement has been put into the re ord here, and I do not know whether there is any questio on the part of the trunk lines still or not, but it seems quit plain that the wording of that divisional arrangement doe not apply to Seatrain traffic, and I believe it is a correc statement to say for some time past, no trunk line officia has made any such claim to Hoboken.

Q. Now, Mr. Brush, before you get farther along in you history, you have testified that when the Hoboken wa owned by the Chapman interests, Hoboken and Seatrai [fol. 160] had reached an agreement under which the Ho boken was to seek a division of $1, and was to pay Seatrai 40¢ for its services in making the interchange, the use of it patents and in consideration of the added traffic to be se cured for the Hoboken.

Did you, after Seatrain acquired the ownership of th stock of Hoboken, enter into contracts between Seatrai and Hoboken on those terms?

A. Yes, we entered into the same contract that we woul have made if we had—would have made with the Chapma interests.

Q. And as had been agreed to with the Chapman inter ests?

A. And as agreed to.

Mr. McCollester: Mr. Examiner, there are two contracts in order to put all of the situation before you. The first o a lease of the trestle and slip from Hoboken Manufacturers Railroad to Seatrain, in the form of a letter dated Noven ber 21, 1932.

Is that correct, Mr. Brush?

The witness: That is correct.

Mr. McCollester: We offer this in evidence.

Examiner Hoy: Without objection it will be received as Exhibit No. 10.

(Exhibit #10, Witness Brush, received in evidence.)

(Discussion off the record.)

By Mr. McCollester:

Q. Was there a second contract, Mr. Brush, dated No-
[fol. 161] vember 21, 1932, relating to the handling of freight by Seatrain for Hoboken, and the payment by the Hobaken to Seatrain of forty cents a ton?

A. Yes.

Q. That is the contract you have before you?

A. That is correct.

Mr. McCollester: We offer this in evidence, Mr. Examiner.

Examiner Hoy: It is accepted as Exhibit No. 11.

(Exhibit #11, Witness Brush, received in evidence.)

By Mr. McCollester:

Q. Now, will you continue, Mr. Brush, with your chronological history of the negotiations carried on by the Hoboken after its ownership was acquired by the Seatrain with the Trunk Lines, relating to divisions on Seatrain traffic?

A. Well, to the best of my recollection, there was no discussion with the trunk lines between the latter part of September and the first part of December but——

Q. 1932?

A. 1932, —but somewhere in about the middle of December, 1932, a meeting of the trunk lines' division Committee was arranged to meet with us, to discuss the question of the division on Seatrain traffic.

Q. I believe that was a freight traffic manager's committee?

[fol. 162] A. Freight Traffic Manager's Committee. However, that meeting did not take place, because such committee informed the Hoboken that they did not have authority to settle this question of the divisions, and if Hoboken wanted to come over and state its case, they would consider it only, but would have nothing to say, and had no power

to take any action. Hoboken told the committee under the circumstances it felt it would like to sit down and discuss the matter if anything needed discussion, with people who did have the authority, and that ended it.

However, Hoboken discussed the problem with some of the trunk lines individually. I personally went to see a number of the presidents. Shall I list them?

Q. Yes.

A. The first man I saw was General Atterbury, president of the Pennsylvania. I saw Mr. Williamson of the New York Central, Mr. Davis of the D. L. & W., Mr. Denny of the Erie, and vice-presidents of the B. & O.—which one I forget now; in fact, I think there were two—the vice-president of the Lehigh Valley, and Mr. Ewing, I believe, of the Jersey Central.

Those meetings had to do with both Seatrain problems and Hoboken problems.

Without going into what they told me, which may be objectionable to the defendants, at least, I concluded that the [fol. 163] matter should be held in abeyance for a few months in order to determine from actual operations such things as costs, flow of traffic, volume of traffic, competition, and the like.

In the summer of 1933, after operating for over nine months, I again saw several of the presidents, and they felt that it was time to call a meeting of the trunk lines, harbor line, at least.

Q. They so stated to you?

A. They so stated to me, and they actually called the meeting, which was held on October 19, 1933, to which I was invited.

I outlined the problems that existed as between the trunk lines and Seatrain, the problems which existed between the trunk lines and Hoboken.

The major problem in connection with the Hoboken was the question of this division.

I asked the presidents whether they would decide, if they were going to do anything about it, whether to treat the various problems in connection with the Hoboken on their own merits and separately from Seatrain, or whether they were to be decided in connection with Seatrain.

The meeting decided that they would treat Hoboken's problems separately. I was so informed, and I think it was

a matter of record of the trunk lines themselves of that [fol. 164] meeting.

As a result of that meeting, the presidents appointed two committees, an operating committee and a traffic committee to go into the various problems dealing solely with Hoboken, the problems in connection with Hoboken being this division question; and as a part of this division question, there comes up the question of reclaim on Seatrain traffic, which I will explain in a minute.

The only other strictly Hoboken question was one concerning the economy and efficiency of the Hoboken.

May I say something off the record?

Examiner Hoy: Yes.

(Discussion off the record.)

By Mr. McCollester:

Q. Can you state who the committees were, by the way?

A. The committees were—the operating committee was comprised of Mr. Deasy of the Pennsylvania Railroad, Mr. Dinan, vice-president of the New York Central, and Mr. Woodruff of the Erie.

Mr. Woodruff, however, being in Cleveland, turned over his duties to Mr. Bordwell, the general manager of the Erie, at New York.

The traffic committee was comprised of Mr. Franklin of the Pennsylvania, Mr. Brister, vice-president of New York Central, and Mr. Grey, vice-president of the Erie.

[fol. 165] In discussing the question of the allowance with the presidents on October 19, 1932, one of the presidents brought up the question as to whether Seatrain, being a stockholder, could expect the Trunk Lines to pay the Hoboken allowances, to make Hoboken whole, if the Hoboken was an uneconomic carrier, and that in so far as he was concerned, he felt that our request on the trunk lines for $1 a ton, although it might be less by thirty-five cents than the allowance which would be granted to the Hoboken if it went via Seatrain's competitor, Pan Atlantic, from the same shipper to the same consignee over the same route, except by different vessels—that it still might be too much if it was a fact that Hoboken was an uneconomical carrier.

My answer to that question was that I did not believe that Seatrain, as a stockholder, could expect the trunk lines to

make its subsidiary whole, if its subsidiary was not in fact performing an economic public service, and was not in fact economically justified.

So the instructions of the presidents to these committees contained the instructions to find out and to make a report as to that particular phase of the Hoboken situation.

Q. In other words, whether the Hoboken was economically operating?

A. And economically justified.

[fol. 166] Q. Yes, go on.

A. Now, it so happens that a number of the trunk lines also brought up—have brought up that question, because it seems that the Hoboken was offered for sale to all of the trunk lines during the War Department's ownership, and they all looked into it, and they all turned it down as being no good; and therefore, the impression was practically universal among the trunk lines that the Hoboken was not a good proposition.

Their investigations, however, went way back into the early 1920's. In fact, some of them I traced back even before the war.

Nevertheless, that impression prevailed, and still prevails in the minds of a number of the trunk lines' officials, and I am quite sure that they are sincere in their belief.

There was only one other thing which I want to mention about that meeting. I said to the presidents that I had had some unfortunate experience before, and that although we were prepared to open the doors and to let their committees determine the facts, that I wanted it understood that the committees were to keep me informed as to what they reported as to the facts, and since I have been given some of the data, if not all—as much as I want, anyway—that these committees compiled.

[fol. 167] Q. Now, did Hoboken permit this operating committee to make as thorough a study as it wanted to of Hoboken's operations?

A. Well, I can say that two of the three were satisfied, but I am not sure that the third member of the committee was satisfied. The reason I say that is because after the cost study was made—when I say the cost study I mean—I guess that is all right—after their investigation of Hoboken, I was given some of the data. I may have been given all of the data; I don't know; and upon analysis, if was just

so bad, it created a comeback to go do it again, and for reasons which I think were entirely proper, I refused to let them go back and do over again what they had done originally.

Now, I wish to recall that I put in one cost figure that that committee determined, and I should like to say right here and now that although I would be prepared to take their costs on what they do, I certainly am not prepared to take the costs in that report, or any of them, on what Hoboken does, because they are obviously ridiculous.

When they found the traffic on the Hoboken cost ninety-five cents a ton to handle—where they ever arrived at that cost, I don't know, but by delving into the way they compiled their figures, no accountant would approve of the methods.

Q. Well, now, so far as—strike that, please. You do not [fol. 168] approve of that figure because it was too high; is that right?

A. No, I approve—whether it had been ten cents a ton, I would have disapproved of it because it was obviously wrong.

Q. Wrong in the method in which it was arrived at?

A. Wrong in the method of determining the figure.

Q. Now, Mr. Brush, on the question of the economy of operation of the Hoboken, your testimony stated the findings of the Committee which you are now describing on that point, did it not?

A. Yes, they found—the findings of this Committee were that 91.4 per cent of all traffic to and from Hoboken could be lightered, and that lighterage was much more economical than paying Hoboken its agreed divisions.

Of course, you can see that if the figures of Hoboken's costs, and other things relating thereto, were incorrect, that such conclusion could have been reached, but I think it speaks for itself.

Q. Now, what about the subject of per diem and reclaim, that was the other subject investigated by this committee?

A. Well, Hoboken took the position that Seatrain was a common carrier by water, and that all its tariffs—or, the tariffs to which it was a party, trunk line tariffs, provided that cars should be held for certain days free time at the [fol. 169] ports awaiting delivery, and vice versa.

The trunk lines had taken the position that Seatrain was not a common carrier by water, and that Hoboken was not entitled to any reclaim at all.

The trunk lines took the position that they would not settle any reclaim accounts on any traffic with Hoboken, unless Hoboken would agree to accept nothing in connection with Seatrain traffic.

Well, certainly, Hoboken could not charge Seatrain for—or Seatrain shippers per diem on cars being held in accordance with its tariffs, and why any such controversy ever arose is quite beyond me. It went all the way up through the American Railway Association, even up to Mr. George Randall, head of the Transportation Committee, who tried to straighten it out, and, incidentally, agreed entirely with Hoboken's point of view; but the facts are that it never had been straightened out, and Hoboken has not received one penny of reclaim for six years on anything, although the Commission has since decided that Seatrain is a common carrier by water, and the trunk lines' tariffs and Hoboken's tariffs apply certainly on that traffic.

Now, in connection with the operating committee's report, on that particular matter, two members of the committee agreed with Hoboken.

Examiner Hoy: Is it necessary to go into that per diem [fol. 170] and reclaim in detail, Mr. McCollester?

Mr. McCollester: I do not think it is necessary to go into it in detail, Mr. Examiner, except on this point, which I want to ask Mr. Brush.

By Mr. McCollester:

Q. Now, the existing divisions on non Seatrain traffic of the Hoboken are predicated upon the assumption, are they not, that Hoboken on the average has no expense for car hire?

A. That is correct.

Q. And that it shall have a switching reclaim equal on the average to the average detention of cars on its lines?

A. That is correct.

Q. Now, your claim with respect to divisions on Seatrain traffic is predicated, is it not, upon the same assumption?

A. That is correct.

Q. That was true with respect to the dollar that was originally asked, is it not?

A. That is correct.

Q. And it is true now as to the divisions of $1.35 out of lighterage free rates, and sixty cents out of non lighterage free rates, which are what we now seek; is that correct?

A. That is correct

Q. So that if the per diem—if the reclaim arrangement is not such as to offset the per diem, so that the Hoboken is forced to incur expense for car hire, that would involve [fol. 171] increasing the divisions' claim to an amount sufficient to cover the expense of car hire; is that correct?

A. That is correct.

Q. Now, is it the fact that the Hoboken's position in that regard is predicated upon the fact that it is a switching road, and that the usual practice is that a switching road shall not incur expense for car hire?

A. That is correct.

Mr. McCollester: On this question, Mr. Examiner, I want to put into the record two exhibits.

By Mr. McCollester:

Q. First I will show you, Mr. Brush, a letter dated May 9, 1935, from Mr. Dinan and Mr. Woodruff to Chairman Lawrence of the Trunk Line Association, and ask you if that is a copy, as it purports to be, of the report of a majority of the operating committee on this per diem reclaim situation?

A. That is correct.

Mr. Eshelman: May I ask a question at this point: was a copy of this delivered to you at the time it was made?

The Witness: Yes, that was the arrangement.

Examiner Hoy: Without objection, it will be received as Exhibit No. 12. You offer it, Mr. McCollester?

Mr. McCollester: Yes, I offer it in evidence.

(Exhibit #12, Witness Brush, received in evidence.)

By Mr. McCollester:

Q. I also show you, Mr. Brush, a letter dated May 10, [fol. 172] 1935, signed by Mr. Deasy, and likewise addressed to Mr. Lawrence, and ask you if that is the report of the minority of the Operating Committee on this same subject, is that correct, Mr. Brush?

A. That is correct.

Mr. McCollester: I offer this in evidence.

Examiner Hoy: Without objection, it will be received as Exhibit 13.

(Exhibit #13, Witness Brush, received in evidence.)

By Mr. McCollester:

Q. Mr. Brush, I want to be sure the record is clear on this point: that this report and Mr. Deasy's minority report were the report of the committee on the per diem and reclaim situation, so far as the Hoboken was concerned. That is what they were supposed to be?

A. That is what they were supposed to be. You will notice that the majority report says "Herewith recommendation of the operating committee on Seatrain matters".

If you will read the report, it has nothing whatsoever to do with Seatrain. So far as I know, the operating committee had no Seatrain matters under consideration, and hence the minority report, I can only conclude——

Mr. Pierson: Doesn't the minority report speak for itself?

Mr. McCollester: I think so. Mr. Examiner, I would direct your attention to the fact that the minority report [fol. 173] presents the majority not on the ground of anything relating to the subject of per diem, but on the ground that it would be a good idea to stop Seatrain.

Mr. Eshelman: Well, I still think you might look at the document itself.

Examiner Hoy: The exhibits will speak for themselves.

By Mr. McCollester:

Q. Now, Mr. Brush, continue with your story of the negotiations, if you will.

A. Well, after the operating committee had looked into the question of Hoboken's operations, and couldn't find any way for Hoboken to operate any cheaper, except as described yesterday, by reducing certain overhead expenses, the other important matter was the question of whether Hoboken was an economic carrier.

Now, certainly, if their own costs of lightering traffic are to be taken as correct, as of the date it was made, and you should try to put all of—91.4 per cent of Hoboken's traffic around by lighter, the cost would obviously exceed

by far the cost of handling that freight via the Hoboken Shore Railroad.

You would merely have to take the tons handled by each road to and from Hoboken, and multiply the allowances to the Belt, if any, plus Hoboken's allowances, and offset that by the lighterage costs, as shown, and you would find that the trunk lines couldn't have delivered freight to Hoboken, [fol. 174] other than Seatrain, or including Seatrain, by lighter, as cheap as they could deliver it by the Hoboken Manufacturing Railroad.

Q. Now, the point——

A. Excuse me.

Q. All right, go ahead.

A. Now, that point was recognized by at least two members of the Operating Committee.

Mr. Eshelman: I think we ought——

Q. Which two men were those?

Mr. Eshelman: —to confine the "recognized". Apparently this relates to Exhibit No. 12, does it not? I think it ought to be confined to that.

By Mr. McCollester:

Q. You are not just testifying as to what is on Exhibit 12, are you, Mr. Brush?

A. No, I am testifying as to what the Operating Committee did in connection with Hoboken, because so far as I know, the Operating Committee never reported on one of the important matters they should have reported on.

Mr. Eshelman: Yes, but you were testifying as to what was recognized by two people. If that isn't a state of mind, and contrary to the rule, then I don't know my evidence.

The Witness: Excuse me, then, let me state it another way: to my knowledge, no report of the operating committee was ever made on the question of Hoboken's economy [fol. 175] or its costs in connection with Seatrain traffic. It may have been made. If it was, I haven't got a copy, but in discussing the matter with the Operating Committee, the conclusions which they reached, and the recommendations that they made——

By Mr. McCollester:

Q. All you can say is not what they concluded, but what they told you?

A. No, I was there.

Q. All right.

A. So what happened was that two members of the Committee, in my presence, advised the vice-presidents in charge of traffic who, at that time—it had been decided that they were to finally set this allowance on Seatrain traffic—that $1 per ton was a reasonable allowance, based on Hoboken's costs, and Hoboken's economy.

Mr. Eshelman: May I interject to ask: do I understand this was an operating Committee?

The Witness: No, I said two of the members.

Mr. Eshelman: Members of what?

The Witness: Of the Operating Committee.

Mr. Eshelman: At a meeting, told their Operating vice-presidents——

The Witness: No, told their traffic vice-presidents.

Mr. Eshelman: I see.

By Mr. McCollester:

Q. Now, who were those two men?

A. I will say that during this whole time which exceeded about fifteen months—you can see the time the report was [fol. 176] finally made—that I was never invited to sit down with the full Operating Committee. It was always somebody who was absent. I have sat down with the various combinations.

To answer your query, as to how I sat down with two——

Mr. Eshelman: No, that wasn't my query. It was as to who they were.

The Witness: Well, the two men.

Mr. Eshelman: I meant as to whether they were operating or traffic people.

The Witness: Yes, they were operating people who—so far as I know, the only report that was made was a verbal report in my presence to their vice-presidents.

By Mr. McCollester:

Q. To their traffic——

A. Traffic vice-presidents, and if any other report has been made, it was not given to me.

Q. I asked you who those two operating men were.

A. Mr. Dinan and Mr. Bordwell.

Q. Of the New York Central and Erie?

A. New York Central and Erie.

Q. Respectively. And they reported to their traffic vice-presidents that, based upon their study, $1 was a reasonable division for the Hoboken on Seatrain traffic?

A. That is quite correct. Now, Mr. Brister was not present. Mr. Dinan said that he would so report, so advise Mr. Bordwell. Mr. Grey was present.

[fol. 177] Q. So advise Mr. Brister?

A. No, Mr. Bordwell, and so advised Mr. Bordwell he would report to his vice-president in charge of traffic.

Mr. Eshelman: May I get this straight again: who was there at the time?

Examiner Hoy: This is off the record.

Mr. Eshelman: Yes.

(Discussion off the record.)

Mr. Eshelman: Who was present at the meeting of which you spoke?

The Witness: Mr. Bordwell, Mr. Dinan, and later on, Mr. Grey.

By Mr. McCollester:

Q. Mr. Grey is the traffic vice-president of the Erie?

A. That is correct.

Mr. Eshelman: The traffic vice-president of the New York Central was not there at the time?

The Witness: That is correct.

Mr. Eshelman: When did this meeting take place?

The Witness: Prior to this date of their report.

Mr. Eshelman: That is prior to the date shown on your Exhibit 12?

The Witness: Prior to May 9, 1935.

By Mr. McCollester:

Q. Well, now, I just want to be sure the record is clear on this point. Mr. Brister not being there, did Mr. Dinan [fol. 178] of the New York Central that he would report to Mr. Brister that in his opinion that $1 was a reasonable division, and would advise Mr. Bordwell that he had so reported?

A. Yes.

(Discussion off the record.)

By Mr. McCollester:

Q. And that was sometime in the year 1935, was it not?

A. That is correct.

Q. Now, has anything happened since then on this division question?

A. Yes. After that meeting, as I understood, the third member of the Committee did not approve of the findings of two of the members of the Committee.

Q. That was Mr. Deasy of the Pennsylvania?

A. That was Mr. Deasy of the Pennsylvania, and I was called back again to meet again with parts of the Committee, either as a Committee, or as individuals—I never knew—and the whole thing was just rehashed up and down, back and forth, so that to my knowledge, I don't know that the Trunk Line Operating Committee ever arrived at a conclusion as to this question of costs and reasonable allowances based on costs.

Q. You mean as a committee?

A. As a committee, in connection with Seatrain traffic, and [fol. 179] I want to make that entirely clear, because I have no knowledge, as I say, whether these meetings were committee meetings or whether they were—each road endeavoring to get the facts; and, incidentally, the Pennsylvania man at Hoboken who did the majority of the work over there—we had obviously many discussions with him without the others.

I am not trying to insinuate anything, and I do not want it to be so taken—that there was anything wrong.

Mr. Eshelman: I just assume there was a difference of view.

The Witness: That is all, I understand—that there was a difference of view.

By Mr. Collester:

Q. Well, in any event, Mr. Brush, you don't know whether the Operating Committee as a committee made a report to the Traffic Committee, which you were informed was to decide the position of the Trunk Lines as to what the division should be?

A. No, I don't know, as a committee.

Q. Now, has the Traffic Committee, so far as you are informed, reached any conclusion as a committee?

A. On the question of the $1 allowance?

Q. Yes.

A. No, I don't——

Q. You have never been informed?

A. I have never been informed. The nearest approach to [fol. 180] such was long after the Traffic Committee made their report. In fact, it was only several months ago, when Mr. Lawrence called me on the telephone and asked me—told me they were having a meeting and asked me if I would come over and discuss Hoboken's allowances.

I said I would be glad to, and went over, and we had a discussion not with the traffic committee, but with about twenty-five or twenty-eight railroads, roads that we never had any business with. That was just several months ago.

Q. Now, you have testified that you were informed that the original determination of the president committee, was that these two Hoboken Railroad problems, that is, as to the division and as to per diem and reclaim, should be handled to a conclusion on their merits, and independently of the questions as to Seatrain; is that correct?

A. That was the understanding, and it was so put in writing by Mr. Lawrence, I believe, at the time. I think I have a copy of it somewhere in my file.

Mr. Eshelman: Can you give us reference to that later on?

The Witness: Yes, if I can find it.

By Mr. McCollester:

Q. Has that been done, so far as you know? Has that course been followed consistently, I mean?

A. No, we were advised that the course had been definitely [fol. 181] changed, that the trouble with settling Hoboken's matters—that they got so involved with the Seatrain, that

the trunk lines themselves were not able to agree, and therefore, we were told that the Hoboken's problems would have to be handled after the Seatrain's problems, and that if we wanted to handle them otherwise, that we could bring a divisions case before the Commission, which we proceeded to do.

(Discussion off the record.)

By Mr. McCollester:

Q. In connection with Exhibit No. 8, Mr. Brush, the point was made yesterday that these were lighterage costs for 1933, and we are now in the year 1938.

Do you have reason to be familiar with contract costs for lighterage in New York Harbor?

A. I have been familiar with them for some years.

Q. How does that come about?

A. Being assistant to the president of the Ward Line. We operated our own lighterage department as a separate department. My first knowledge of the lighterage costs came from that experience.

Since Seatrain started its service in October, 1932, Seatrain has handled considerable business, as is shown on one of the exhibits already in, by lighter.

Part of that business shown in that exhibit is Seatrain's own local business, and a part of it is trunk line lighterage, so that we have at the present time and have had for the past six years contracts for lighterage.

[fol. 182] Q. Now, do you know whether some of the trunk lines themselves contract with contract lighterage companies for some or all of their lighterage?

A. Why, no, they contract with, for instance, Spencer, for the labor in handling lighters. I think that in most cases the trunk lines have their own lighters, and only occasionally charter outside lighters, or contract for outside lighters themselves.

Q. Well, now, so far as lighterage costs are concerned, of contract lighters, how do costs now compare with costs in 1933?

A. They are materially higher. One of the principal items of lighterage is labor, and it is public knowledge that lighter labor has been increased since 1933 here in this harbor.

Q. About what is the increase?

A. About twenty-five per cent.

Q. Now, that increase would apply, whether the railroads performed lighterage—so far as the railroads are concerned, whether they performed it with their own lighters, or with contract lighters, would it not?

A. Yes.

Mr. Eshelman: May I ask, did that twenty-five per cent relate to the labor portion of the cost, or to lighterage as an entirety?

[fol. 183] A. No, labor cost. I do not know how much the railroads have actually raised in per cent—their lighter labor. I do know they have raised it since 1933, I believe, at least twice.

By Mr. McCollester:

Q. Have the railroads represented that their costs of handling freight have increased since 1933?

A. Yes, they have.

Examiner Hoy: (To the reporter) Read that question.

(Last question is repeated by the reporter.)

Examiner Hoy: Do you mean by lighter or freight generally, Mr. Brush?

Mr. Eshelman: I think he means generally.

Mr. McCollester: Generally.

By Mr. McCollester:

Q. Have the railroads represented generally that their terminal handling costs have increased since 1933?

A. Yes, and their rates for such have been increased.

Mr. Eshelman: May I just interject to ask what representation you refer to when you select terminal costs alone?

The Witness: The question was on terminal costs, and those were all a part of Ex Parte 123.

Mr. Eshelman: You are relying on Ex Parte 123?

The Witness: Well, I mean, as an illustration.

[fol. 184] Mr. Eshelman: I just wanted to know.

The Witness: There have been others.

By Mr. McCollester:

Q. Have you discussed terminal costs in New York Harbor with railroad operating men?

A. Yes, I discussed these lighterage costs. I was very much interested and quite surprised that some of them were able to do it so iow, and asked why it was that the Lehigh Valley, for example, could lighter stuff for $1.30, when all the reports that had been gotten up by——

Examiner Hoy: You mean $1.40?

The Witness: $1.40, we will say, and all the reports of their experts had shown considerable higher costs than what they had shown in the statement, and I was advised that at least some of the lines had not put in any overhead expenses in these lighterage costs.

In other words, as they put it to me, if a railroad had a lighter, the depreciation or interest on that lighter, and so forth and so on, just was not considered, because they had it.

Mr. Eshelman: Mr. Examiner, I object to this line of testimony as being thoroughly hearsay.

Examiner Hoy: I think that is so.

Mr. McCollester: I think it is hearsay from the defendants themselves. I think we are entitled to state what they have said.

[fol. 185] Examiner Hoy: Well, some unidentified railway employee has told him something—the objection is sustained.

By Mr. McCollester:

Q. Can you state—identify the railway employee?

Mr. Eshelman: Well, I also object on the ground it is immaterial, your Honor.

Examiner Hoy: Don't you think you have covered that, Mr. McCollester?

The Witness: I have already answered that question. I told you with whom the discussions were.

(Discussion off the record.)

Examiner Hoy: We will adjourn until two o'clock.

(Whereupon, the hearing was adjourned until two o'clock p. m.)

Afternoon Session

GRAHAM M. BRUSH was recalled as a witness, having been previously duly sworn, testified further as follows:

Examiner Hoy: Let us resume, gentlemen.

By Mr. McCollester:

Q. Mr. Brush, you have referred to the appointment of the traffic committee by the trunk line railroads, and to the fact that the operating committee was to report to the traffic committee, which was supposed to consider the question of the Hoboken's division. Have you a copy of a memo-
[fol. 186] randum of meeting of Special Traffic Committee held at 143 Liberty Street, on November 23, 1934?

A. I have.

Q. This consists of a memorandum, to which is attached, memorandum signed by B. T. Lawrence, to which is attached, two documents, one signed by W. S. Franklin, and the other signed by D. L. Gray, and C. J. Brister; and then to which is further attached a list of tariffs; is that correct?

A. That is correct.

Mr. McCollester: We offer this in evidence, Mr. Examiner.

Mr. Eshelman: Might we ask counsel for what purpose it is introduced?

Mr. McCollester: For two purposes: it is to present to the Commission a complete story of the negotiations. This is one of the documents in the negotiations, and also, we will refer to the statement in the letter to Mr. Lawrence of Mr. Gray and Mr. Brister, which is attached to the report, and a part of it on page 2, citing that the current average lighterage expense on both eastbound and westbound traffic of the roads mentioned—that is the New York Central and the Erie—runs from $1.41 and nine-tenth cents per ton to $1.69 per ton.

Mr. Eshelman: To the extent that it is offered as evidence of what would be a reasonable amount to pay Hoboken on
[fol. 187] Seatrain traffic, I submit it is immaterial what the costs might be on lighterage traffic or on other traffic to certain railroads.

It seems to me it is objectionable on the ground of immateriality.

Mr. McCollester: Of course, that is a question——

Mr. Eshelman: It has a lack of relevance to——

Mr. McCollester: That is a question of——

Mr. Eshelman: I have not quite finished.

Mr. McCollester: All right, excuse me.

Mr. Eshelman: It is clear that there is no logical connection between what it might cost the railroads or certain railroads to do certain business, and what Hoboken should have on Seatrain traffic.

As far as it is relating to negotiations, as between Hoboken and Seatrain, which was the basis, as I understand it, for the discussion of these prior reports, it seems to me that this completely misses that issue, and it does not even appear to be anything in which Seatrain or Hoboken, either one, was a party.

This seems to be purely an internal matter as between the trunk lines, and therefore, it seems to me it is wholly incompetent, and it certainly lacks relevancy and materiality.

I think it is objectionable; I do make that objection.

Mr. McCollester: Mr. Examiner, on the first point, as [fol. 188] to the relevancy of lighterage costs, that is a question as to which apparently opposing [counsel]? and I differ.

Examiner Hoy: We have already received evidence as to lighterage costs, so I do not think it is objectionable on that ground.

Mr. McCollester: As to the point that it is entirely between the trunk lines, I think that the history of the negotiations so far will indicate that these negotiations were initiated to deal with Hoboken-Seatrain matters, and, as Mr. Brush has testified, it was understood that he was to be kept informed of what the trunk line committees did, because Seatrain was concerned, and because Hoboken was concerned, and one point of the exhibit is to show that the entire emphasis of the trunk lines,—entire interest of the trunk lines has been in the Seatrain angle of the situation, and that they have neglected the Hoboken divisions angle.

I think that it is necessary, in order to present a complete story of the negotiations, and I want to couple it up with a detailed report of a sub-committee, which was either embodied in or accompanied this report of the main committee, and which clearly indicates the relevancy of—clearly

indicates that it is a matter in which we, and not the trunk lines alone were concerned.

Mr. Eshelman: Mr. Examiner, I might add that quite a little of this, as I get it, in hurriedly glancing through it, [fol. 189] relates to Seatrain matters, as apparently distinguished from Hoboken matters, and I understood we were discussing the matter of Hoboken on Seatrain traffic rather than worrying about Seatrain troubles in this particular proceeding.

Mr. McCollester: Mr. Examiner, may I say on that, we had been led to believe, as I think Mr. Brush's testimony has indicated, that the trunk lines were prepared, originally, to dispose of the Hoboken matter on its merits, regardless of their final determination, as to their attitude towards Seatrain, but, as Mr. Brush has testified, they didn't do that, and the final outcome was that they said they couldn't just decide anything about the Hoboken's division until they had determined what their attitude towards Seatrain should be, and this is a report on that subject, and, therefore, as I say,—the next exhibit is the report of the subcommittee, which should really be a part of the exhibit which has just been offered, and goes to the point of the trunk lines' attitude toward Seatrain, which has prevented them, on their own statements, from coming to any decision on the Hoboken situation.

Mr. Eshelman: Mr. Examiner, it seems to me from what counsel has said, that the whole point of this adds up only to the proposition that the trunk lines have not agreed yet, agreed with Hoboken, on what should be divisions on Seatrain traffic.

[fol. 190] That is to say, by his own language, he says that this relates to what was the attitude and what is the attitude. I don't understand that the Commission is here attempting to determine the attitude of this party or that party, or that it is of any importance what that attitude may be; regardless of our attitude at that time, the Commission is going to follow its statutory duties on the facts here developed, and I don't understand that this has anything to do, really, with what should be the amount of the divisions to be fixed for Hoboken.

Now, it seems to me that this is dragging in a whole lot by the ears that has no real place in this case. If there is real evidence, I submit we ought to have it.

Mr. McCollester: May I say this further, on this point, Mr. Examiner, that we have conceived that the Trunk Lines might take the position as has been indicated in some of these negotiations, that if they were hurt by the trains operations, they were going to do everything they could to prevent the movement of traffic by Seatrain, including interference with the continued operation of Hoboken, and Hoboken securing a reasonable division on Seatrain traffic.

Now, this study of the Traffic Committee, as I understand it, was a study undertaken by them primarily for the purpose of considering whether the Seatrain traffic was desirable traffic for the trunk lines to handle.

[fol. 191] Now, it seems to me that that is a question that goes to the issues in this case, because it is on that traffic that we are to divide, or that we are asking the Commission to divide the rates, and whether the Trunk Lines have benefited by this Seatrain traffic or have been injured by the Seatrain traffic, is, I am prepared to concede a question which perhaps by some stretch of the imagination the Commission might fairly consider in determining what the division should be to Seatrain's subsidiary, the Hoboken, on this very traffic; and if you will see, these reports, the one that has been offered, and the one I am going to offer now, go to the question of whether the Seatrain traffic is desirable traffic for the Trunk Lines; in other words, whether the traffic, the rates on which we are asking the Commission to divide, is desirable traffic for the Trunk Lines to handle.

Mr. Eshelman: One other fact that I would like——

Examiner Hoy: Just a minute, Mr. Eshelman.

Mr. Eshelman: I was not going to argue, just to point out a fact, if you do not mind.

Examiner Hoy: Were these documents given to you, Mr. Brush, pursuant to the agreement with the carriers that they would keep you advised of the negotiations going on.

The Witness: Yes, sir.

Mr. Eshelman: May I interject at that point to say that apparently this was introduced as a part of this same cor[fol. 192] respondence that we had this morning, but if you will compare the dates of those things, you will find that it does not tie up at all.

Notice that exhibits 12 and 13, to which reference was made this morning, are May 9 and May 10, 1935.

Mr. McCollester: Oh, yes.

Mr. Eshelman: And this is November 23, 1934, a year prior to that time. I do not understand that we have even had any basic testimony or foundation of testimony laid by this witness that would justify the introduction of any such memorandum of a special committee of traffic executives regarding Seatrain matters.

Mr. McCollester: I am afraid that Mr. Eshelman does not remember the testimony. It was to the effect that the negotiations began in 1932, and that in 1933, two committees were appointed to handle both questions.

Mr. Eshelman: But this is not the special committee.

Mr. McCollester: This is a special committee, is it not, Mr. Brush?

The Witness: The two reports attached to this memorandum are a report of the majority and minority traffic committees appointed by the presidents at their meeting of October 19, 1933, to bring in findings as to facts, and recommendations on Hoboken and the Seatrain matters which were discussed at that meeting with the presidents. [fol. 193] Mr. McCollester: Mr. Examiner, before you——

Examiner Hoy: Just a completion of that history you were given this morning?

The Witness: Absolutely.

Examiner Hoy: I will overrule the objection and receive this exhibit—No. 14.

(Exhibit #14, Witness Brush, received in evidence.)

Q. Was there, as a part of that report which has been marked exhibit 14, a report addressed to Mr. Lawrence of a committee of assistant vice presidents, and is that the report of that committee (handing to witness)?

A. That is correct.

Q. And that was part of the report which has been received as exhibit 14?

A. That is correct, that is the basic data as to the traffic vice presidents' report.

(Discussion off the record.)

Mr. Eshelman: Mr. Examiner, in view of the fact that this is a part of the other report and I believe so stated to be, I suppose the objection ought also to include this.

Examiner Hoy: Yes, the latter statement will be received as exhibit 15, and Mr. Eshelman's exception will be noted.

Mr. Eshelman: I did not take an exception, but I just noted an objection.

[fol. 194] (Exhibit #15, Witness Brush, received in evidence.)

Q. When you received the report, exhibit 14, and in connection with it, exhibit 15, did you write to the presidents of the several railroads an identical letter in reference to the report, and is that a copy of such letter (handing to witness)?

A. I did.

Mr. McCollester: I offer this in evidence, Mr. Examiner. That we offer, Mr. Examiner, just to complete the history.

Examiner Hoy: Without objection, it will be received as exhibit #16.

(Exhibit #16, Witness Brush, received in evidence.)

(Discussion off the record.)

Mr. Eshelman: I take it, however, Mr. Examiner, in view of the fact it is written by complainant it would be a self-serving declaration and while we will not object to it on that ground I think that also ought to be taken into consideration in considering its scope, or the extent of its receipt.

I take it that what might be said here cannot be binding upon us, except as it might indicate what the complainant itself—what action the complainant itself took.

Mr. McCollester: That is correct.

Q. Are the statements of fact in this letter that are statements made by you correct, or were they at that time?

A. Yes, they were.

[fol. 195] Q. Referring to exhibit 16. Just one more, to complete the record: Did you receive a reply to your letter, exhibit 15, from President Davis of the Lackawanna, and is that a copy of his reply (handing to witness)?

A. I did, that is a copy.

Mr. McCollester: I offer that in evidence.

Examiner Hoy: It will be received as Exhibit No. 17.

(Exhibit #17, Witness Brush, received in evidence).

(Discussion off the record.)

Q. Now, Mr. Brush, as you have testified, these negotiations have come to nothing, so far as any settlement of the divisions controversy is concerned?

A. I would like to make this statement: This whole procedure of the appointment of committees for investigation went to determining the facts, and during this whole time there was never any negotiations as to trading, horse trading, at all between Hoboken and any of these committees.

These committees were to determine the facts and we were working with them solely on the facts.

In other words, we never made any proposal other than the original proposal of $1.00 a ton, and the committee never made any other proposal to us—merely, trying to determine what the facts were.

Q. A question has been raised—I think, perhaps, off the record—as to why the Hoboken delayed until December, [fol. 196] 1936, in filing the present complaint.

Mr. Eshelman: I object to the question, your Honor, obviously the reasons which might have induced Hoboken to delay filing its complaint could have no bearing whatsoever upon the extent of the Commission's jurisdiction in this case.

Examiner Hoy: Well, I think the objection is warranted. I do not see any pertinency to the issues here as to when the complaint was filed, or the Commission's jurisdiction to make findings or orders.

Mr. McCollester: Well, Mr. Examiner, I think if counsel makes no argument upon the point opposing counsel, why, of course, we have no purpose in doing it, but a suggestion has been made here that if we were not satisfied with what they were prepared to offer, why didn't we bring our complaint in the beginning?

Mr. Eshelman: I do not think we have said anything of that sort, have we?

Mr. McCollester: I think Mr. Eshelman said, "Why didn't you bring your complaint in December, 1932?"

Mr. Eshelman: Or did the Examiner ask you that?

Examiner Hoy: I said yesterday, in talking on the question of your jurisdiction—I said I doubted very much if the Commission would pass on the question, on an issue as

to which they could not enter an order, and I think I stated [fol. 197] at the same time—rather, you stated that it was [fol. 198] necessary, if you went to court, and I said,—well, perhaps the answer there might have been, "Why did you delay in filing your complaint?

Mr. McCollester: Well, Mr. Examiner, I want the answer to the question to avoid the possibility of any argument that if we had felt serjously about this matter we would have considered that our claim was really a good claim and would have brought our matter earlier.

Examiner Hoy: I do not think that is pertinent to the issues in this case, as to when the complaint was filed. I think probably the testimony put in here today explains why a complaint was not brought sooner.

Mr. McCollester: I think so too. All right, that is the answer as to why the complaint was not brought sooner.

Examiner Hoy: Of course, when a complaint is brought is always a matter of judgment.

Q. Mr. Brush, do you know whether some or any of the trunk line railroads actually deducted the $1.00 per ton on Seatrain traffic before pro-rating with their connections?

A. They did.

Q. But they didn't pay it to the Hoboken?

A. They paid Hoboken only 60 cents.

Q. Now, I want to come to——

Mr. Eshelman: By the way, will you just develop that a bit more—how many roads?

Mr. McCollester: I will, if you want to, you may.

[fol. 199] Q. What roads do you know about that did that?

A. It first came to our attention when they started to settle claims with the Hoboken; that on the basis of pro-rating claims that they had been deducting a dollar. Now, the New York Central, for one—how many other roads did it, I don't know—possibly none others did, but it has been my understanding that that was what the roads were doing.

Mr. Eshelman: You mean what all the roads were doing?

The Witness: My understanding may be entirely wrong, so I will merely state that if that understanding is wrong, let the roads say so because I know that the New York Central deducted——

Mr. Eshelman: Mr. Examiner, I think that is obviously incompetent, for the witness to say that he imagines that so

and so is the case, and if it isn't it is up to somebody else to prove it.

I ask that his answer be stricken.

Examiner Hoy: The record here shows as it stands now, the only instance he knows of was the New York Central, that he actually knows of.

Q. You know the New York Central did it?

A. Yes.

Q. Now, I want to come, Mr. Brush, to the change from the original contract between Hoboken and Seatrain to the contracts that are in effect today. Will you state the con- [fol. 200] siderations which led to changing the terms of the original contracts?

A. As I have testified before, in considering this whole question of a proper contract between Hoboken and Seatrain, we based it on the assumption that all, or substantially all, of the traffic which Seatrain was to handle would be lighterage free freight, but as time went along, as early as 1935, we put a check to see how closely that assumption was being borne out by the facts, and we found at that time that approximately 30 per cent of the Trunk Line-Seatrain interchange was not lighterage free freight.

Now, to make it perfectly clear, if we had billed the Trunk Lines for $1.35 on lighterage free freight, 60 cents on non-lighterage free freight for this test period, they would have paid $1.08 and a fraction per ton. We only billed them for $1.00.

Therefore, the savings which we had been offering to the Trunk Lines, which they had not accepted apparently, of 35 cents a ton, had shrunken down to something over 8 cents a ton.

Now, it seems to us to be questionable whether, in view of the fact that there was a substantial amount of non-lighterage free freight moving, without an agreement to average the charge to the Trunk Lines, whether Hoboken was justified in continuing its arrangement with Seatrain [fol. 201] which was based on that $1.00 per ton allowance. This not only affected the Trunk Lines, it affected Seatrain on its local business, because Seatrain had been paying Hoboken $1.00 a ton on its local business.

Q. That is, business originating or terminating on Hoboken Manufacturers' Railroad?

A. That is correct, other than L.C.L., in which case we paid Hoboken $1.45. So after consideration of the situation, we decided, all facts considered, that the thing to do was to cancel the original Hoboken-Seatrain contract and enter into a new contract or contracts which would permit Hoboken to charge and endeavor to collect a difference allowance on non-lighterage freight than it did on lighterage freight.

In other words, we decided to make the Seatrain contract with Hoboken identical in every respect to the contracts which Hoboken had with the other water lines which it served, or their agents or contractors, stevedore contractors.

Q. Now, in the first place, Mr. Brush, that involved a change in the lease between the Hoboken and Seatrain, did it not?

A. Yes, because you will recall that under the original arrangement, Seatrain was to operate the gasoline locomotive, and also, by examining of the original lease, you will see that Seatrain only leased the trestle for 75 per cent of the time. It actually used it only two days a week. Hoboken uses the trestle, did then, and still does, for its own [fol. 202] business, so that in the new lease, the lease and the arrangement was that Hoboken would do the switching to and from Seatrain ships, just exactly the way they would do it to every other ship, and that Seatrain's lease of Hoboken's property would be an identical lease that Hoboken would make with any other steamship; namely easing the trestle and the other equipment pertaining to a steamship terminal, and then, if Hoboken wanted to use it, Seatrain would charge Hoboken for using its pier or trestle or facilities, just the way Hoboken pays other steamship lines when it wants to use their pier or facilities.

Q. Is the document that you have before you, marked agreement dated the 24th of February, 1937—for further identification, the second "Whereas" clause containing the words "Railroad is leasee"—is that the new lease that was made?

A. That is correct.

Mr. McCollester: We offer that in evidence, Mr. Examiner.

Examiner Hoy: It will be received as exhibit 18.

(Exhibit #18, Witness Brush, received in evidence).

Q. And that lease is still in effect?

A. That lease is still in effect, yes, sir.

Q. Now, at the same time you have testified that you entered into a new contract relating to the handling of freight as between Hoboken and Seatrain. Is the contract that [fol. 203] you have in front of you dated the same day, 24th of February, 1937, between Hoboken Manufacturers' Railroad and Seatrain Lines, Inc., the contract that you have just referred to?

A. That is correct.

Mr. McCollester: We ask that it be received in evidence and marked exhibit 19.

Examiner Hoy: It will be received as Exhibit 19.

(Exhibit #19, Witness Brush, received in evidence.)

Q. Is the contract, exhibit 19, still in effect?

A. That is correct.

Q. Now, Mr. Brush, you stated that the purpose was to make a contract between Hoboken and Seatrain in terms similar to contracts between Hoboken and other water lines.

How did you determine the payment to be made by Hoboken to Seatrain?

Mr. Eshelman: If you permit an interjection there, Mr. Examiner, in connection with this exhibit 19, I think perhaps we ought to make clear on the record that we, of course, are not objecting to the contract going in as the contract. We, of course, would object to it being received for proof of any facts or any theories that it might attempt to put forth as binding on us.

Examiner Hoy: It is received merely as a copy of the new contract entered into.

Mr. Eshelman: That is right, because I had in mind—

[fol. 204] Examiner Hoy: Not as proof of the facts stated therein by any means.

Mr. Eshelman: I had in mind here the reference that it is the Railroad's obligation to do so and so.

Examiner Hoy: Well, he is referring there to the Hoboken, I presume.

Mr. Eshelman: In any event—I take it—

Examiner Hoy: That is the parties understand—

Mr. Eshelman: This will not be conclusive.

Examiner Hoy: Hoboken's obligation was to do so and so.

Mr. Eshelman: But even so that might be a legal question as to which we would certainly reserve an objection, if that in turn were sought to be saddled upon us.

Examiner Hoy: No, it is received as a copy of the contract, not proof of the facts stated therein.

Mr. Eshelman: That is right.

Examiner Hoy: Or binding upon you in any way; binding upon the parties to the contract.

Continue, Mr. McCollester.

Mr. McCollester: I had an unanswered question.

(Last question was repeated by the reporter).

A. We determined the payment by taking the payments which Hoboken made to other steamship lines, or their subsidiaries, or their stevedore contractors, and we based the [fol. 205] Seatrain payment on what Hoboken was paying others for the same—under the same contract.

(Discussion off the record.)

Q. What, if any differences are there between Hoboken's obligations and undertakings under its contract with Seatrain, exhibit 19, and its obligations under its contract with Pan Atlantic Steamship Company?

Mr. Eshelman: To the extent that that question calls for an answer regarding facts, there is, of course, no objection. To the extent that it would attempt to deal with conclusions of law, we, of course, would object to it.

A. Well, as to the actual differences between the two contracts I have taken the contract which Hoboken has in connection with the Pan-Atlantic which, incidentally, is with the Ryan Stevedoring Company, Inc., a subsidiary wholly owned by the Pan-Atlantic, and I have examined the two documents, and except for changing the names, there are only three differences.

The wording is identical, with the following differences:—

Mr. Eshelman: May I ask this: Are you going to put that Ryan contract in?

Mr. McCollester: I was just going to save cluttering up the record with another contract. We have it here.

Mr. Eshelman: What is the date of the Ryan contract?

Mr. McCollester: The present contract is February 26th, 1937.

[fol. 206] Mr. Eshelman: Two days after the other one was drawn up.

Mr. McCollester: That is right.

Mr. Eshelman: And after the date of filing the complaint.

Mr. McCollester: That is right.

The Witness: Let me say that this Ryan contract was merely produced in writing from letters. The actual practices on that date had been in existence since the inception, practically the inception of Pan-Atlantic Service—and that same thing is true in connection with all other contracts at Hoboken—that the actual practices which had existed for years were reduced to a more complete contract form and not a single practice was changed in connection with the reducing of these contracts to this form.

Q. How about the payments?

A. Neither were the payments changed. There was nothing changed. In other words——

Mr. Eshelman: Mr. Examiner, I think I shall have to object to any testimony about this Ryan contract unless it is put in. It seems to me that the contract is its own best evidence.

Mr. McCollester: I agree that the contract is the best evidence. I was just trying to save—we intended to put it in, Mr. Examiner, and then I thought counsel would get [fol. 207] wary of having exhibits.

Q. Is the contract relating to stevedoring of freight, interchanged to the Pan-Atlantic, the written contract dated February 26th, between Hoboken Manufacturers' Railroad and Ryan Stevedoring Co., Inc., that you have before you?

A. That is correct.

Mr. McCollester: I offer this in evidence.

Examiner Hoy: It will be received as exhibit 20.

(Exhibit #20, Witness Brush, received in evidence.)

Mr. Eshelman: Would you mind asking the witness when the Pan-Atlantic Service was begun?

The Witness: 1933. In that connection, Mr. Examiner, I think this would be a good time to correct an impression that I made this morning that Pan-Atlantic Steamship Lines was at Hoboken in 1932.

I do not think I said it, but if I gave that impression, I want to correct the impression.

Q. This contract with Ryan, exhibit 20, on page 4, paragraph 9, provides for a payment of 70 cents per ton by the railroad to the steamship company or its contractor.

Was that the payment that was in effect in the contract covered by correspondence prior to the date of this particular form of contract?

A. That is right.

Q. And I suppose Hoboken made the best bargain it could [fol. 208] with the Ryan Stevedoring Company?

A. That is right.

Q. Now, do you also have a contract which in its present form was entered into at about the same time, February 18, 1937 between the Hoboken and the Jarka Corporation?

A. Yes.

Q. Who is the Jarka Corporation?

A. They are stevedoring contractors. They do the work primarily for the Holland-American Line.

Examiner Hoy: This exhibit will be received as exhibit No. 21.

(Exhibit #21, Witness Brush, received in evidence.)

Q. And this is the contract under which the contractor handles for the Hoboken freight interchanged with the Holland-American line, is it?

A. That is correct, sir.

Q. And are the terms of this contract in its present form similar to the terms of the contract for arrangements in effect prior thereto—prior to the date of February 18?

A. That is correct, they are identical.

Mr. Eshelman: May I ask how long the Holland-American Line has been docking there?

The Witness: Well, I cannot answer that question, except to go back to my knowledge—at least 15 years.

Mr. Eshelman: Yes, and is this the first time you have [fol. 209] had an agreement in this form with the stevedoring company that does the work for the Holland-American Line?

The Witness: In this form, yes.

Mr. Eshelman: Prior to that, just by an exchange of correspondence?

The Witness: That is correct.

Q. Well, now, is that entirely correct, Mr. Brush? Didn't you have a written contract with—I think it was with Jarka or the Holland-American Line?

A. The contract was not—just as Mr. Eshelman stated—merely a letter, primarily agreeing as to the rate per ton.

In other words, it did not go into all the——

Mr. Sshelman: Recitals.

The Witness: —recitals, but, as I have testified, these recitals are in fact what the practices were, and had been prior to Seatrain's acquisition of Hoboken and during the time leading up to the reduction in writing of these practices, which we understand—which Mr. Mathey, incidentally, has already testified to,

Q. Well, if I may state, in the face of some of these contracts, not all of them, I was the author, and I was furnished by my clients with copies of contracts, some of which were in contrary form, which were in existence at that time, and asked to reduce them to substantially uniform form, which would be mutually satisfactory to counsel for the contract-
[fol. 210] ing parties.

These contracts were arrived at by me in that way and turned over to you after negotiations with counsel for the contractors.

Mr. McCollester: Turned over to Mr. Brush after negotiations with counsel for the contractors.

(Discussion off the record.)

Q. Now, you have contracts in similar terms for other—handling freight to and from other steamship lines, do you?

A. That is correct.

Q. Now, what have you to say with refernce to the Ryan contract, exhibit 20?

A. You will note that paragraph 9, page 4, provides for changes in the amount to be paid, depending on the stevedoring rates in New York Harbor. Although, between the date of this—putting the agreement in this form, and the present time, there has been a change in long shore wages, there has been no change in connection with Pan-Atlantic

rates or the Ryan Stevedoring rates for the reason that their business is coastwise only, and there is a difference in the stevedoring rate in connection with coastwise and foreign, and after negotiations with the Ryan Stevedoring Company, they agree to leave their old rate of 70 cents in effect; whereas, all the other contracts which Hoboken has, such as the Jarka contract—those rates were increased at the [fol. 211] time longshoremen's wages were last increased, and those—well, for instance, the Jarka contract, exhibit 21, shows 69 cents; the actual being paid is 72. The Clark contract——

Q. What is that?

A. That is another one of these contracts—the actual rate being paid today is 75 cents.

Q. That is for handling of freight in connection with what steamship line—the Clark?

A. Clark is Hoboken's General stevedoring contractor. Where the steamship lines have no particular contractor of their own, we use Clark for doing this work, as covered in this contract.

The contract with Seatrain, althought it provides—carries the same clause—it was not changed either, because Seatrain too carried a proportion of coastwise freight, and we did not see fit, in view of the fact that Ryan did not change, to change the Seatrain rate.

Q. Now, all of these other contractors, other than Seatrain are individuals or companies in which neither Seatrain or Hoboken has any financial control or interest, is that correct?

A. No, they are the concerns we have been doing business with for years, and we have no interest whatsoever in any of them.

Q. And with them you have to bargain at arm's length for whatever terms—for the best terms you can get; is that correct?

A. Well, take Jarka, or Ryan, for example, I wouldn't [fol. 212] make a contract with Jarka or Ryan if I can get it done cheaper by Clark or if I can get it done cheaper by hiring our own men directly.

Q. And these contracts, including the Seatrain contract, exhibit 19, are the contracts—except as modified—as you

have indicated, as to the amount of payment—under which Hoboken is operating at the present time; is that correct?

A. That is correct?

Q. And freight is being handled in accordance with the terms of those contracts, where intercharge between Hoboken and any of the steamship lines concerned is involved?

A. That is correct?

Q. Will you, Mr. Brush, explain the difference between the Seatrain's contract and the other contracts, and why those differences exist?

A. Well, taking the Ryan contract, Exhibit No. 20, comparing the wording of exhibit No. 19, other than to change the name, you will find that the contracts read identically, with the exception of paragraph 4 on page 3.

Mr. Eshelman: Which exhibit?

The Witness: Of the Seatrain contract. Paragraph 4, page 3 of the Seatrain contract.

Q. Exhibit 19?

A. Exhibit 19—which starts out and says, "Steamship will at its expense do any and all checking incident to [fol. 213] making delivery and taking receipts of such freight from steamship," whereas the Ryan contract places that obligation on the Hoboken, and it reads, "Railroad will at its expense * * *"

The next difference between exhibit 19 and exhibit 20 you will find in exhibit 19, paragraph 8, page 4, that it reads, "Steamship will at its expense supply all materials required for bracing, blocking, and banding such freight, and for lining cars, containing such freight", whereas in exhibit 20, the Ryan contract provides that the Hoboken will do that.

Now, incidentally, in the Clark contract, Clark does the checking, which explains the higher rate. Clark also provides a part of these materials, and so forth, but for business reasons we did not feel that we wanted to contract with the Ryan Stevedoring Company to check the freight or to supply the materials in connection with the blocking and bracing and lining of the cars, and the like—cleaning the cars.

Those are the only differences, and they account for the slight difference in the rates paid.

Q. Now, when the Hoboken handles freight moving on lighterage free rates, and that freight is delivered to the

Pan-Atlantic, we will say, or the Holland-American Line and in that delivery, is handled by the contractors under the terms of contracts, Exhibits No. 20 and 21, what divi-
[fol. 214] sion do the Trunk Line railroads pay to Hoboken?

A. $1.35.

Q. And the same is true on freight handled by those contractors and loaded coming off ships of the Pan-Atlantic or Holland-American Lines and loaded into railroad cars and delivered to the Hoboken to its rail connections; is that right?

A. That is correct.

Examiner Hoy: We will take a five minute recess.

(Whereupon a short recess was taken.)

After Recess

Examiner Hoy: All right, resume, gentlemen.

Q. Mr. Brush, have you prepared for presentation as an exhibit here income statement of the Hoboken Manufacturers Railroad for the year 1936?

A. I have.

Q. Was that based upon the books of the company with certain computations which you were about to explain?

A. Yes, column one is in accordance with the books of the company and as reported to the Interstate Commerce Commission and as audited.

Mr. McCollester: We ask the exhibit be received in evidence and marked exhibit 22.

Examiner Hoy: The exhibit will be received.

(Exhibit #22, Witness Brush, received in evidence.)

[fol. 215] Q. Now, Mr. Brush, I wish you would take exhibit 22 and explain first the adjustments shown in the second column of the exhibit?

A. Well, you will note that the second column differs from the first column in only four respects, four accounts. Those differences were due to charges which were picked up in 1936, applicable to other years, or not picked up, which should have been picked up, which had been put in other years.

For example, see Note 8: Emergency charges, as per the books, $4,326.93, adjusted was $13,083.68.

Now, in other words, when we closed our books for the year 1936, we still had in controversy with the Trunk Lines the amount of emergency charges which Hoboken was entitled to. We only set up the amount that had been agreed to but later on, in order to adjust we had to set up the amount that we were entitled to, which, incidentally, is the amount that has now been either agreed to or paid.

So to get a true picture of the year's operations for the year 1937, it was necessary to adjust such items as that.

Now, if you will refer down to note 8—I think I have explained it in my own language—you will see that confirms my testimony.

As to note 9, you will see various adjustments in connection with taxes, and the reasons therefor.

Note 10, the same thing is true. Note 12—again, it is [fol. 216] a matter of bookkeeping adjustments to allocate the expenses to the proper year.

Q. Now, looking at the top of the exhibit, the first item under Railway Operating Revenue—the total of $188,237.32 is based upon what division or allowance of the trunk lines on Seatrain traffic?

A. Note 2 shows Hoboken charged the Trunk Lines $1.00 per ton during that year, and so sets up their accounts.

Q. So that this——

A. There were a few instances where we billed $1.35, and in certain instances the Trunk Lines, or one Trunk Line, paid those charges of $1.35; and the rest refused.

Q. Now, were those instances where freight was actually loaded or unloaded?

A. That is correct.

Q. But generally speaking, with those exceptions, the figure of $188,237.00 is the revenue of the Hoboken, on the assumption that the division from the Trunk Lines was $1.00 per ton?

A. That is correct.

Q. Will you explain the write down of $42,251.33?

A. Since 1932, Hoboken had been setting up in its revenues $1.00 per ton, although with some exceptions, only 60 cents had been paid. That fact was continuously upsetting our accounts. We had correspondence with the Interstate [fol. 217] Commerce Commission about it, and we decided for various reasons that a reserve should be set up.

The amount of money in dispute had gotten so large that the accounts were almost meaningless unless some mention was made, some proper mention was made of this difference.

Now, instead of actually setting up a reserve, dollar for dollar, we set up a reserve of $1.00 and wrote down 25 cents a ton, so that you will note that for that particular year, the Hoboken would have made a profit of some $40,000.00 whereas it shows a slight deficit.

Q. Now, while you wrote down your account receivable from the Trunk Lines on Seatrain traffic, the Trunk Lines paid you even less, did they not, than the amount to which you had written down that item?

A. Oh, yes, they paid 60 cents, whereas this figure is actually based on 75 cents. We set it up at $1.00 and wrote down 25 cents.

Q. So that this does not show—so that, as far as receipts, actual receipts are concerned, the Hoboken actually did not receive the amounts shown as revenue on exhibit 22?

A. No.

Q. Now, have you anything further——

A. In so far as Seatrain Trunk Line traffic is concerned.

Q. So far as Seatrain—Trunk Line traffic is concerned?

A. We did receive all the other revenues.

[fol. 218] Q. Have you any further comments on exhibit 22?

A. Except to call your attention note 1. You will see that for reasons stated, any L.C.L. traffic which was interchanged between the Trunk Lines and Seatrain all went into the freight house, and it became a new shipment the way we handled it, and the $1.45 was billed against the Trunk Lines and $1.45 was billed against Seatrain.

That traffic is all shown up under Seatrain's L. C. L. and the Trunk Lines' allowance of division on such traffic would be contained on other traffic.

Q. Now, have you prepared—strike that.

I am afraid I did not ask you—were the figures on exhibit 22 correctly taken from the books or correctly computed?

A. They were taken directly from the books and have been correctly computed.

Q. Have you also prepared for introduction here an income statement of the complainant for the year 1937?

A. I have.

Q. That has two schedules to accompany it, has it not?
A. That is correct.

(Discussion off the record.

Mr. McCollester: Mr. Examiner, we ask that the exhibit of three sheets, Hoboken Manufacturers' Railroad income statement, year 1937, together with schedule 1 and 2 thereof, [fol. 219] be marked exhibit 23, and be received in evidence.

Examiner Hoy: It will be received as exhibit 23.

(Exhibit #23, Witness Brush, received in evidence.)

Q. This exhibit was likewise prepared from the books of the company, and the figures taken from the books were correctly taken, and the computations were correctly made?
A. That is correct.
Q. Now, will you explain this exhibit, Mr. Brush?
A. The first column is as per the books and you will see from the notes, how Hoboken charged for the various classes of traffic.

Please note that there is a distinction made between the first two months and the last ten months. That distinction comes about due to the fact that on March 1, 1937, Hoboken started billing the Trunk Lines 60 cents a ton on non-lighterage freight and $1.35 a ton on lighterage free freight.

Also, Hoboken entered into, as of that date, a contract, new contract, or a revised contract with Seatrain and therefore there were two months under the original contract and ten months under the revised contract.

Q. Those original contracts are the contracts in evidence here as exhibits 10 and 11 and what you referred to as the revised contracts of the exhibits 18 and 19. That is correct, is it not, Mr. Brush?
A. That is correct. I think all the notes on Column 1 are [fol. 220] similar to those on exhibit 22, and are perfectly plain and self-explanatory.

We have discussed, I think, the various points in previous testimony.

Column 2, again, is the adjusted account, income account for the year 1937. Again the explanations as to why there were adjustments from prior years are contained in the notes below and are entirely clear, I believe.

The importance of the third column is to show what would have happened if the original contract had been kept in effect throughout the year.

You will see from that that Hoboken would have been better off to the extent of about $15,000.00. Most of that is due to lower payments to Seatrain Lines, and lower charges to the Trunk Lines.

Now, you will see that in this particular year, non-lighterage freight swung past 50 percent. Whether that is a trend, or whether it is going to stay there, nobody knows.

Mr. Eshelman: May I ask where is that shown on the exhibit?

The Witness: By note 11. You will see if we had billed you $1.00 a ton for the year, we would have billed you, for the last ten months we would have billed you $163,000, whereas we actually billed you $152,000.

Mr. Eshelman: Where does that show the 50 per cent?

[fol. 221] I did not get that.

The Witness: Well, if you will average—let us assume there are two tons of traffic, one is lighterage free and the other is non-lighterage free.

We would bill you $1.95 if it moved Pan-Atlantic for example, and you would pay it. If it would go on the Seatrain, we would have billed you $1.00 on both of them, would have billed you $2.00 instead of $1.95, so as soon as non-lighterage free freight——

Mr. Eshelman: Where does that $1.95 come in?

The Witness: 60 cents plus $1.35. We would have billed you 60 cents for the non-lighterage free freight and you would pay. We would have billed you $1.35 for the free ton and you would have paid it.

In other words, if the traffic had moved Pan-Atlantic you would have paid $1.95.

Mr. Eshelman: For the two tons?

The Witness: For the two tons. Now, if those same two tons had gone Seatrain, we would have billed you up to March 1, 1937, $2.00, and you would have paid $1.20, but subsequent to March 1, 1937, we would have billed you 60 cents on one, and $1.35 on the other; and in other words, we would have billed you $1.95, just the same as we would have billed you if it had gone Pan-Atlantic.

Mr. Eshelman: Perhaps I misunderstood your state-[fol. 222] ment. I had understood you to say that this exhibit indicated that there had been a swing from——

Examiner Hoy: I believe we can take this explanation off the record.

(Discussion off the record.)

Examiner Hoy: Continue.

The Witness: Now, you will see note 13 refers to Seatrain carload local traffic.

Under the new contract with Seatrain, Hoboken on March 1, charged Seatrain a flat rate per car for switching, and that was all, when it was non-lighterage free traffic. If it was lighterage free traffic it billed that same flat rate per car, namely, $16.00—this was prior to Ex Parte 123—plus 75 cents.

Q. Per ton?

A. Per ton.

Q. $16.00 per car? Plus 75 cents a ton?

A. That is correct. Now, you will see another item that affects Seatrain which I think requires explanation, but I don't think has anything to do with this case, except to stop it from confusing things.

Up to March 1, 1937, Hoboken had been acting as Seatrain's agent, as I have explained, in pushing the cars from Seatrain shipside down to the end of the trestle, and it had been charging Seatrain 40 cents a ton, to act as its agent. [fol. 223] Well, when we began to get into cost studies, and surveys, of this whole situation, we found that that charge was entirely too high, and we brought it down, as I have testified, and shown here, to a flat rate of $2.50 per car.

Mr. Eshelman: That is the lightered freight, is it?

The Witness: That is Seatrain's lighterage freight.

Q. Which the railroad does not handle as a carrier?

A. Which the Hoboken does not handle as a carrier, but which the Trunk Lines sometimes handle as carriers.

In other words, in order to get Seatrain Lighterage free to the trunk line, we must move the car from alongside of the ship down to the end of the trestle, and there deliver it to your lighters, or vice versa, pick up from your lighters, and move it up to the ship.

Now, that is purely a matter of something that has been overlooked for some years by both Hoboken and Seatrain. The charge was not a proper charge.

Q. That $16.00 per car is now $17.60 under Ex Parte 123?

A. That is correct.

Q. Plus 75 cents a ton where it is lighterage freight?

A. That is right.

Q. Now, Seatrain has paid that charge right along, has it not?

A. Yes, and prior to that Seatrain paid the $1.00 a ton.

Mr. Eshelman: Do you say that is a reasonable charge?

The Witness: The $2.50 per car?

[fol. 224] Mr. Eshelman: Yes.

The Witness: Yes, that is my opinion, and the opinion of the men who have the charge of that operation. That isn't supposed to represent the cost of Hoboken for that move.

Q. Just what is that move, Mr. Brush?

A. Why, I have testified to that once before.

Q. All right, I think that is all on the first part.

A. Now, going down to Note 15,—you will see all the balance of the notes are note 15—all of these changes from there on down are brought about due to the change in the rental contract between the Seatrain and the Hoboken, and in order to make it entirely clear as to what Hoboken had been charging Seatrain, I have prepared two schedules.

Schedule 1 shows in detail what Hoboken actually charged Seatrain for the trestle berth, and crane.

Now, those charges were made up of rent, taxes, return on investment, depreciation, insurance and maintenance, and in the first column, I have shown the proportion that Hoboken charged Seatrain in its original contract.

Where 75 per cent is shown, it means that Seatrain was only using the property in part. Where 100 per cent, Seatrain had full and exclusive use of the property.

Examiner Hoy: Under the new contract, you haven't got any percentage for the land and slip?

[fol. 225] The Witness: I want to explain. Under the original contract, when Seatrain was performing that last part of the switching operations, with the gasoline locomotive, a part of the property, which Seatrain leased, contained a part of Hoboken's main yards where Seatrain's cars were usually held either awaiting delivery to the ship or coming from the ship. It was the end of the yard. The so-called main yard is the so-called Seatrain yard.

Now, when Seatrain ceased to do any switching operations, we ceased to rent the land above water. It no longer had anything to do with the arrangements and we merely

leased the land under water, which was the berth, and the trestle, which is built over the land under water.

In other words, we merely leased a pier. We did not lease any back property at all.

Now, in the rent which Hoboken charged Seatrain the rent represents the actual rent which Hoboken paid to its landlords, there was no profit in rent, merely took the amount of rent which Hoboken paid to the landlord for the property which it in turn rented to Seatrain and it charged Seatrain the amount of that rental.

It did the same in connection with taxes—merely charged Seatrain what it in turn was paying on the property in rent and taxes, but when it came to making a profit, Hoboken took its investment in the properties which it leased to [fol. 226] Seatrain and it charged Seatrain 6 per cent on the net book value of those properties.

It charged Seatrain the actual depreciation; it charged Seatrain the actual insurance; and it charged Seatrain the actual maintenance.

The actual maintenance was determined each year by taking the actual maintenance for the previous year so that Hoboken was always made whole, maintenance being an unpredictable item.

Now, Seatrain also had occasion to use flat cars which Hoboken owned. Hoboken leased those to Seatrain on the same theory of charging Seatrain all of its costs plus 6 percent on its investment.

Under the original contract, the only operation which the gasoline locomotive performed was that final part of the switching operations and therefore you will see that Hoboken charged Seatrain the entire cost of that locomotive, both ownership and operating costs.

In addition, Hoboken charges Seatrain for the use of office space in Hoboken, and for a small spot in its freight house, which is set aside for Seatrain and it charges them the going rent per square foot for that floor space.

Now, to show you the difference between the two contracts, the two rental contracts, I have shown the original contract—the exact items charged Seatrain, and paid in [fol. 227] 1936, and in the next heading, I have shown you what those charges would have been under the new contract form for a 12-month period.

Under the next main heading, you will see that for the year 1937, the rental charges for the first two months were on the old contract form, in fact, and for the last ten months, were on the new contract form, and the third column is the actual amount which Seatrain paid Hoboken for the year 1937.

Therefore, if you will go back to the exhibit, and you will look at each one of these notes, you will find that there is a difference of a few dollars here and there, brought about by the changes as shown, between these two contracts.

Now, to make doubly sure that this is entirely clear, I have made a second schedule to tie in with the books of account, and you will notice the first column of maintenance of way and structures—looking to your income statement, you will find that there is a difference between the old contract and the new contract of $430.09, and these details will show you how and why there was that difference, coming back to the difference between the old contract and the new.

The same on maintenance and equipment, the same on transportation, and so forth, right straight through, so that your note 15 on the bottom of the income statement for 1937—each one of those differences is shown right here, and in turn translated right back into the two contracts.

[fol. 228] The purpose of detailing this is to avoid any question of whether Hoboken was renting Seatrain its properties at unreasonable rates. We, therefore, have shown the actual charges made, and how they were in fact translated into the books of account.

(Discussion off the record.)

Q. Mr. Brush, have you made a computation to see what the actual financial results would have been for the Hoboken over a period of six years of operation had the Trunk Lines paid to it on Seatrain traffic the divisions which Hoboken has demanded from them?

A. I have, yes. I have taken the six year annual statements filed with the Commission, and I have added back in the amount that we have written off, as explained, which we only did for two years; namely, 1936 and 1937, and I have added the income up for the six years and for the six years' operations——

Q. Those six years are 1933 to——

A. 1932.

Q. 1932 to 1937 inclusive?

A. '32 to '37 inclusive? If the Trunk Lines had paid all that had been billed them, the net income of the Hoboken of those six years would have been $2,186.41.

Q. That is a total net income, and not an average per year; is that right?

[fol. 229] A. That is the total profit, total net income that Hoboken would have made for six years if the Trunk Lines had paid the full—the allowances which Hoboken billed them, namely, $1.00 per ton, up to March 1, 1937, 60 cents, and $1.35 subsequently, up to the end of 1937.

Q. Coming to the question of the reasonableness of the Trunk Line's divisions and the adequacy of their revenues to pay the divisions which Hoboken sought, have you prepared a statement of one page showing the number of cars handled by the Hoboken for the months of March and September, 1937, the number of tons handled, the average load per car, the average haul, and the average revenue per car, and per car mile, and per ton and per ton mile, comparing freight, actual freight interchanged with Seatrain and other traffic interchanged between the Hoboken and the Trunk Lines?

A. I have.

Q. Is that the statement headed "Hoboken Manufacturers' Railroad interchange with its rail connections for March and September, 1937?

A. That is correct.

Q. Were the basic figures taken from the records of the company and have the computations been correctly made?

A. They were they have beem and they were.

Mr. McCollester: We offer the exhibit in evidence and ask that it be marked exhibit 24.

[fol. 230] Examiner Hoy: The exhibit will be received.

(Exhibit #24, Witness Brush, received in evidence.)

Q. Now, will you comment on the exhibit, Mr. Brush?

A. As it seems to us pertinent, in discussing the fair and reasonable division of the Hoboken in connection with its various classes of traffic, that the earnings of the Trunk Lines should be determined, we selected two months at random, namely, March and December.

We then went to Hoboken's basic records, and found that during that month Hoboken had interchanged with the Trunk Lines 875 cars of traffic other than Seatrain, and that during those two months Hoboken had interchanged with Seatrain traffic which had in turn come from the Trunk Lines of 1102 cars.

The reason it was handled that way was because we are going to follow those 1102 cars on, to show what happened to them, and it was, therefore, necessary to take the Hoboken-Seatrain interchange of Trunk Line traffic, rather than the Hoboken-Trunk Line interchange of Seatrain traffic. There couldn't be more than several cars difference.

We then determined, by listing every car, taking the various records and weights to those cars—we determined ~~the number of tons handled of each class of traffic; we determined~~ the average load per car of each class of traffic; and we determined the average haul for each ton. By de- [fol. 231] termining *By determining* the origin and taking the actual route to Hoboken, as listed in the railroad's records of rail miles, for each class of traffic, we determined the——

Examiner Hoy: Right there, did you take the mileage over the actual routes of movement?

The Witness: Yes, sir, the actual routes of movement.

In other words, we determined our ton miles by multiplying the number of tons by the actual miles that it moved over the route that it moved. We then determined the average revenue per car of the trunk lines from each class of traffic, and from our ton mile figures, which were determined, as I have stated, skipping the car miles for a moment, we determined the average revenue per ton of the Trunk Lines and the average revenue per ton mile of the Trunk Lines.

We determined the average revenue per car mile of the Trunk Lines by taking the average revenue per ton mile and multiplying it by the average load per car.

Now, all those figures, revenues, are before any deductions made for Hoboken's allowances, and the question immediately arises as to what would the Trunk Lines have left—what did the Trunk Lines have left, after they paid Hoboken, and what would they have left if they had paid Hoboken what Hoboken had charged them.

Now, the Trunk Lines, during those two months actually paid Hoboken 61.1 cents per ton on Seatrain traffic, whereas [fol. 232] Hoboken bills them 94.3 cents per ton on other traffic and 94.8 per ton on Seatrain traffic.

Q. Those are average figures?

A. Those are average figures. Well, that was the billings divided by tons.

Now, to explain why it is 61.1 as I have said before, one trunk line actually paid $1.35 on freight which was actually handled. If that Trunk Line had not so paid, it would have been 60 cents.

Q. By handle, you mean unloaded from the cars, or loaded into the cars?

A. That is correct. Therefore, we are able, from the above figures, to deduct, on Seatrain traffic what the Trunk Lines paid Hoboken and actually had left, and what Hoboken billed the Trunk Lines and we think should have left and hence to carry on about the exhibit you will see that the average revenue per car mile for the Trunk Lines after deducting Hoboken's allowances as paid, namely, 61.1 cents —they would have had a revenue of 39½ cents per car mile. If they had paid what Hoboken had billed them, they would have had left 35.54 cents per car mile. The same thing is shown for ton miles, only that is in mills.

Now, to compare what the trunk lines had left, or we believe should have had left, in connection with Seatrain, with what they actually had left on all the other traffic which [fol. 233] we interchanged with the Trunk Lines, the second column shows that they would have had 20.99 cents per car mile left, on the other traffic, and 9.9 mills on the other traffic.

The last column——

Q. 9.9 mills per ton mile?

A. Per ton mile. The last column is merely the weighted average of the first two columns.

Examiner Hoy: Mr. Brush, how did you arrive at your average revenue per car of Trunk Lines—$120.86 in one case, and $122.24 in another?

The Witness: We got the actual basic records either of —that Hoboken itself had, or from the Trunk Lines, to find out what they had collected. In other words, the traffic was not rated; it was actually determined.

Examiner Hoy: Either in the form of——

The Witness: Bills of lading——
Examiner Hoy: —rates or divisions?
The Witness: No, no divisions.
Examiner Hoy: No divisions?
The Witness: No divisions.

Q. By Trunk Lines, you mean the railroads west of Hoboken-Erie interchange?
A. Hoboken's connections.

Mr. Eshelman: That is not including Hoboken itself?.
The Witness: That is not including Hoboken itself. That [fol. 234] was our gross revenue which should be divided down. The question was what should Hoboken's proportion be.
Mr. Eshelman: Well, I meant this $120.86, and the other figures on that same line—do those include or exclude the Hoboken's proportion?
In other words, is this the whole revenue east of the water, you might say—I meant west of the water, or is this only what accrues to the Trunk Lines after paying Hoboken?
A. No, the first group of figures shows the gross revenue before any division.
Mr. Eshelman: Right.
The Witness: And the last group of figures shows it after division in accordance with the way it was paid, and the way it was charged.

Q. To put it this way, Mr. Brush, on freight other than Seatrain freight, does the exhibit show that the Trunk Line railroads have an average revenue per ton mile of 11.8 mills, out of which to pay the Hoboken's divisions?
A. That is correct.
Q. And on that freight, they pay the Hoboken divisions of $1.35 per ton, where the freight is delivered to a steamship if it is lighterage free freight and 60 cents a ton where the freight is not unloaded or loaded by the railroad; is that correct?
A. That is correct.
[fol. 235] Q. Now, on Seatrain traffic the average revenue of the Trunk Lines is 45.2 mills per ton mile?
A. That is correct.
Q. And on that traffic, they have refused to pay Hoboken more than 60 cents per ton?

A. That is correct.

Q. Now, if they—strike that. The payments to the Hoboken of its divisions and freight other than Seatrain freight have left for the Trunk Lines revenues per ton mile of 9.9 mills; is that correct?

A. That is correct.

Q. Whereas, if they had paid Hoboken the divisions on Seatrain traffic, they would have revenues per ton mile of 11.5 mills?

A. That is correct.

Q. And actually, by keeping everything above 60 cents, they kept for themselves revenues of 12.8 mills per ton-mile?

A. That is correct. May I point out to you that you must also consider in connection with this matter your per car mile earnings, as it is particularly important due to the difference in carloadings.

In other words, there is a greater difference between the two classes of traffic in the per car mile earnings than there is in the per ton mile earnings, for both gross and net, and from an earning standpoint, the per car mile earnings are more important than the per ton mile earnings, on a carload [fol. 236] traffic, because it is still moving through, and there is just one car which is to be handled.

Q. That is right. Now, what have you to say as to the profitability of Seatrain traffic to the Trunk Lines, as compared with their earnings on freight generally?

A. Well, it is a matter of public record, and knowledge of the Commission, as to the average car mile earnings of Hoboken's connection, both as a group and individually, and also the per ton-mile earnings, and these figures merely bear out the freight other than Seatrain freight to Hoboken, right on the nose, in connection with their averages, whereas Seatrain freight is quite a bit above it, above the general average.

Mr. Eshelman: May I interject there to ask if, when the witness makes comparisons of average earnings, for instance, per ton mile, of the Trunk Lines, with the figures that he has shown here, if his comparison is not wholly lacking in comparability by reason of the fact that this apparently relates to actual traffic movement, where he has the full haul, while in the case of the system averages to which

he refers, they are not based upon actual average hauls at all?

Mr. McCollester: I think that is cross examination. I heard no objection to the question, but I do think it is cross examination.

Examiner Hoy: That is a question for cross examination, [fol. 237] if you want to develop that.

Mr. Eshelman: I thought perhaps he would agree that that was so, that they were not comparable.

The Witness: I don't agree they were not comparable.

Examiner Hoy: Let us not argue it, Mr. Brush. He can take it up on cross examination.

Q. Now, your exhibit 24, Mr. Brush, referred to 1102 cars of freight interchanging with Seatrain vessels. Bearing upon the reasonableness of the Trunk Line earnings on their divisions, of the rates on that traffic, have you prepared a statement showing the earnings of Seatrain on those same cars?

A. I have.

Q. And the figures on that exhibit are correct?

A. They are.

Q. Have you any comments on that exhibit?

Mr. Eshelman: May we hear Mr. McCollester's question of the witness there?

(Discussion off the record.)

Mr. Eshelman: Mr. Examiner, this appears to be—it is my understanding, Mr. Examiner, that at the beginning of this proceeding when the issues were clarified, the complainant said that it was here only attacking, you might say, the subdivisions of the portions east of the Hudson River.

Mr. McCollester: That is right.

[fol. 238] Examiner Hoy: That is true. This is just offered for comparative purposes. He is not assailing—he has no complaint here as to Seatrain's revenues on this traffic whatsoever.

Mr. McCollester: No. As I see it, Mr. Examiner, an exhibit cannot broaden the issues. This exhibit is offered, as I said, and as you said, for purposes of comparison and in particular it is offered with this in mind: That one of the points that has been made by the railroads in connection with these divisions negotiations or studies has been that any costs over and above switching, which may be incurred

by the Hoboken, should come out of Seatrain's earnings rather than out of the Trunk Lines' earnings, and this is to meet such a suggestion.

Mr. Healey: Are you going to show the income statement of the Seatrain?

Mr. McCollester: If you want. You have it all.

Mr. Eshelman: It seemed to me it was beyond the issues. That was the basis for my——

Examiner Hoy: I think it is all right for comparative purposes. Of course, these earnings are based upon statute miles by water.

Mr. McCollester: That is right, it shows what it is. It does not deceive anybody.

Examiner Hoy: Yes, based on statute miles.

(Exhibit #25, Witness Brush, received in evidence.)

[fol. 239] Q. My question on the record was—have you any comment on this exhibit, No. 25?

A. The 1102 cars shown on exhibit 25 are the identical cars shown on exhibit 24. They were followed through.

You will see, of course, the number of tons is identical, and therefore the tons per car are identical.

I found out, or we found out several things about those cars—where they went to, and where they came from on Seatrain ships—Havana or New Orleans.

In order to give somewhat of a picture, I reduced the miles—the Hydrographic Office miles to statute miles. Incidentally they were already reduced by the office—and I determined the average haul which each ton took on Seatrain vessels, 1731 miles.

We took the actual freight list, bills of lading for Seatrain, manifests, and determined Seatrain's ocean freight on those cars, divided by the number of cars, and got an average revenue per car.

Skipping the average revenue per car mile, we determined the number of tons per car and the average revenue—we got an average revenue per ton, and by multiplying out the ton miles we determined the average revenue per ton mile in miles, statute miles, and by multiplying the average load per car, we got an average revenue per car mile.

Examiner Hoy: I understand the 1731 miles is the aver-
[fol. 240] age of each of the carloads?

Mr. McCollester: The weighted average.

The Witness: The weighted average of each ton which the train handled.

Examiner Hoy: Of each ton?

The Witness: Of each ton, that is correct, sir.

Examiner Hoy: Whether it foreign or coastwise?

The Witness: That is right. In other words, the car miles, the average haul per car, might be 1731, and it might be a little bit more and it might be a little bit less. If each car actually loaded 30.9 tons, you would have the identical figure.

Examiner Hoy: Yes, I understand.

The Witness: And that is the reason I have explained how we arrived at the revenue per car mile.

Now, I will say this: Please note that there is a difference in distance northbound and southbound, as shown. In order to get that figure of 1731, I took 1953 plus 1977, added the two together, and divided by two. That might throw in an error, but it would be out a fifth or sixth place and I just did not go through all the trouble of multiplying out all over, but I wanted to say there might be an error to that extent in those figures.

Mr. Eshelman: May I just ask, did you say that the way you intended? Wasn't this actually a straight average [fol. 241] of the four figures rather than of the two?

The Witness: Well, then, the other two were added together, divided by two.

Mr. Eshelman: I see.

The Witness: And the tons multiplied by the average figure of each.

Mr. Eshelman: I understand.

The Witness: For instance, the New Orleans traffic was—

Examiner Hoy: Multiplied by the average distance north and southbound between Hoboken and Belle Chasse.

The Witness: The distance was taken as 1965, statute miles for traffic, whether it moved northbound or southbound.

Mr. Eshelman: And likewise the average of the 1369 and the 1391 was taken both for the north and the southbound tons to and from Havana?

The Witness: That is right. Thereby it is possible to create a very small error in so doing.

Q. Now, Mr. Brush, what would be the situation, and would it, in your opinion be fair and reasonable if the Trunk Lines on Seatrain traffic were permitted to continue to pay the Hoboken only the division of 60 cents per ton which they paid to the Hoboken on freight involving no loading or unloading or handling by the railroad?

A. I think it would be very unfair to Hoboken. It would [fol. 242] mean that the Trunk Lines had benefited and received a hundred percent and maybe more of the benefits of somebody else's investment and invention.

Q. Now, what are those benefits that the Trunk Line would receive?

A. At the present time, they would receive benefit of 75 cents a ton on lighterage free freight when it moved by a Seatrain ship, but if it moved by Seatrain's competitor, Pan-Atlantic, they would not receive that 75 cents.

In other words, they collected the freight revenue. They just pocket 75 cents on every ton that moves in connection with the Seatrain vessel, that they would not pocket if it moved in connection with Pan-Atlantic.

Q. Would Hoboken be in a position to make any payment to Seatrain in connection with Seatrain's freight if its division from the Trunk Lines on such freight is limited to 60 cents per ton on all freight?

A. No, the answer is clearly shown from the income statements and the statement of income from the six year period. Hoboken would not be able to pay the train anything. Seatrain would then have a just complaint against Hoboken, had it entered into contracts with all the other steamship lines, with which it interchanged freight and wouldn't enter into the same contract with Seatrain.

Q. So that while——

[fol. 243] A. Seatrain would therefore claim that Hoboken in turn was trying to profit by its investment and its invention.

Q. So that while Seatrain would have devoted its invention and its investment to saving in the expense of handling interchange of freight between rail and steamship, it would receive no compensation from the railroad therefor, while other steamship lines that hadn't put in devices for handling freight between rail and ship are paid compensation by the railroads; is that correct?

A. That is correct and it goes one step further. We know of no instance where the trunk lines have taken any such

position. Let us assume that we had accepted an offer that we had to go to one of the contract terminals.

If you will compare the payments which the Trunk Line makes to those terminals, you will find that after deducting the cost of car floaters, that they would be paying those terminals more than they had paid Hoboken, even if they had paid Hoboken what Hoboken charged them.

Mr. McCollester: In order that it may be clear on the record, Mr. Examiner, that Hoboken does not exist solely or even primarily to serve Seatrain, I want to ask Mr. Brush how many industries are served by the Hoboken Manufacturers' Railroad, first, other than steamship?

The Witness: There are about 20 industries in Hoboken, such as General Foods, Standard Brands, Lipton Tea, Light-
[fol. 244] foot Schulz Building Material, American Grocery, Campbell Stores, quite a number of large concerns over there at Hoboken, who are dependent solely upon Hoboken for rail service.

Q. Now, how many steamship lines are served by Hoboken?

A. Mr. Mathey has listed them, but there are about—they vary—ten to twelve, and the only possible rail interchange for those steamship lines is over the lines of the Hoboken shore railroad.

Q. Were most of those industries and steamship lines located on the Hoboken Manufactures' Railroad before Seatrain came into the picture?

A. That is right.

Q. Have you a copy of the balance sheet of the Hoboken Manufacturers' Railroad, as of December 31, 1937?

A. I have.

Q. It is correct?

A. That is correct.

Mr. McCollester: I offer this in evidence, Mr. Examiner.

Examiner Hoy: It will be received as exhibit No. 26.

(Exhibit #26, Witness Brush, received in evidence.)

Q. Is there any comment you want to make on this, Mr. Brush?

A. Yes; I wish to recall for the sake of the record—this is the balance sheet as reported to the Interstate Commerce

Commission and, therefore, the write off is not shown in this balance sheet, except by $1.00 under accounts receivable.

[fol. 245] In other words, the through traffic and car service balances receivable would be increased by some $86,000 or $88,000, which was the amount written off for the two years, 1936 and '37, and only $1.00 has been left on the books representing that amount.

Q. But even this receivable shown under item 713, is more than the basis upon which the trunk lines have so far paid the Hoboken on Seatrain traffic?

A. (To reporter.) Will you read that?

(Question was repeated by the reporter.)

A. Yes, it is more by the difference of 40 cents a ton up to March 1, 1937, and 15 cents a ton beyond that—15 cents a ton on lighterage free freight. Excuse me, will you let me restate that? Will you scratch that answer? I have gotten it confused.

Examiner Hoy: Go ahead, answer it.

The Witness: Yes, that is a correct answer.

Q. Have you anything further to say on the balance sheet?

A. No, if you are going to follow with that (indicating).

Q. Yes. Now, to show the amounts outstanding between Hoboken and its trunk line connections because of the differences between them, one of which is the question of division here involved, have you prepared a statement showing the traffic and car service balances of the Hoboken as billed, as they stood on December 31, 1937?

[fol. 246] Q. That exhibit is correct?

A. That exhibit is correct.

Mr. McCollester: We offer the statement in evidence.

Examiner Hoy: It will be received as exhibit 27.

(Exhibit #27, Witness Brush, received in evidence.)

Q. Now, what comments have you on exhibit 27, Mr. Brush?

A. First, I want to caution that this is as billed, from which approximately $86,000 to $88,000 has been written off in our balance sheet.

In other words, this represents a dollar a ton up to March 1, 1937, 60 cents and $1.35 since that date, up to the end of 1937.

Q. Now, Mr. Brush, just so that the record may be clear, you have referred to the amount as being written off. Is it correct that the Hoboken has actually written that off in the sense that it has abandoned its claim to that amount?

A. No, it is has not abandoned its claim; it has set it up for various reasons.

As I have said before, this has been a matter of correspondence with the Bureau of Accounts in the Interstate Commerce Commission.

As you can well imagine, after taking a look at what is in dispute here, year after year, reporting all sort of things to the Commission, which obviously are in dispute—it is just so large that no picture can be given.

[fol. 247] Q. In other words, the directors considered that in view of the large outstanding amounts, the books showing those did not barely approximate a representation of the current condition of the company so long as those amounts were unsettled?

A. No, I can't testify——

Examiner Hoy: You have testified to that.

Mr. McCollester: All right, strike my question.

(Discussion off the record.)

Q. Will you comment on exhibit 27, Mr. Brush, please?

A. Taking each column, first, under reclaim, that is the amount that Hoboken has billed its various connections for per diem reclaim for cars which it has held on its line on trunk line traffic in accordance with the trunk line and Hoboken's tariff, including Seatrain.

Mr. Eshelman: Both Seatrain and other——

The Witness: Including all cars, which includes Seatrain cars.

Mr. Eshelman: May I ask, prior to the advent of Seatrain, was there a reclaim arrangement in effect?

The Witness: Yes, but beginning October, 1932, the trunk lines stopped paying any reclaim to Hoboken on any traffic and hence, there is over $118,000 due to Hoboken for reclaims, for per diem, which is had paid, or attempted to pay to the car owners, but for which it has received no reimbursement from the trunk lines.

[fol. 248] Column 2, "Other" represents the difference between what the trunk lines have paid on Seatrain traffic and

what they have been billed on Seatrain traffic, plus the open traffic and car service balances on all other traffic, which is a very small figure, amounting to maybe $15,000 or $20,000 at the end of each month.

Columns 3 is the per diem which Hoboken has offered to pay to its various connections, and which the connections have refused to accept.

That per diem is on cars which Hoboken has held for its account—when I say "its account",—its account, and the trunk lines' account in accordance with their tariffs—owned by its connections, and cars owned by its connections which Hoboken has delivered to Seatrain and Hoboken has in turn collected the per dien from the Setrain, and Hoboken in turn has offered to pay the trunk lines.

Q. Now, why have they refused those payments?

A. I don't know. I have been told various reasons, all of which, or most of which are contradictory.

Mr. Eshelman: This column relates only to per diem—this third column of figures relates primarily to cars—relates only to cars delivered to Seatrain or handled in Seatrain services as distinguished from other cars used on the Hoboken; is that so or not?

A. No.

[fol. 249] Mr. Eshelman: It includes all cars?

The Witness: It includes, as I have testified, cars which Hoboken has held for it and trunk lines' accounts in accordance with its tariffs.

Mr. Eshelman: That is what I wanted to clear up.

The Witness: Team track industry——

Mr. Eshelman: As well as——

The Witness: Other steamships and Seatrain, and in addition the amounts of money which Hoboken has collected from Seatrain on cars owned by these railroads, which Hoboken has in turn endeavored to pass on to the trunk lines, which the trunk lines have refused to accept.

Now, this per diem is only one cars owned by these connections of Hoboken. In other words, if a car was a New York, New Haven and Hartford car, Hoboken would have paid that $1.00 per day while the New York, New Haven and Hartford car was in its possession, which it was holding under its tariffs, and it would reclaim on the line haul carrier, and the line haul carrier would refuse to pay.

Q. Now, Mr. Brush, I assume that we all understand, but the record may be cold sometimes, so that I want to be sure that it is very clear as to just what the situation is: Before Seatrain came into the picture, is this the fact: That the Hoboken as a switching line paid per diem to the owners of cars?

Examiner Hoy: Now, Mr. McCollester, are you not going [fol. 250] to repeat his testimony and get him to say yes?

Mr. McCollester: Yes, but I don't think he has covered exactly—maybe he has.

Examiner Hoy: He said that Hoboken paid reclaims before Seatrain came into the picture.

Mr. McCollester: Paid per diem.

Examiner Hoy: Paid per diem and had a reclaim arrangement before Seatrain came into the picture.

You testified to that?

The Witness: Yes.

Mr. McCollester: That is right.

Q. Then, when Seatrain came into the picture, the railroads refused per diem on the kind of cars that—refused reclaim on the kind of cars they paid reclaim on before.

A. Alleging that if Hoboken did it——

Examiner Hoy: I do not think you need explain that, Mr. Brush. You testified to that once before; you did say that.

The Witness: I think so.

Q. And so far as Seatrain is concerned, Seatrain cars are concerned, Hoboken has undertaken to pay the owners of those cars for per diem, pay to it by Seatrain, which Seatrain undertakes to pay to it?

A. That is correct.

Q. While the cars are in Seatrain's possession?

[fol. 251] A. That is correct.

Q. And Seatrain has made payment to it, and it has not been able to make payment to the owners?

A. No—to these owners.

Q. These owners; that is what I mean.

A. It has made payment to all other owners.

Q. I mean to these owners shown on exhibit 27?

A. The last column represents the open traffic and car service balances other than per diem and reclaim, which Hoboken owes at the end of the year to its connections. That is, as I testified before, offset in the corresponding

column under receivables by approximately the same amount.

Q. Now, I see that the Hoboken holds per diem, an amount exceeding by about $115,000 the reclaim which it claims is owed to it?

A. That is correct.

Q. Has it any means of paying that per diem it owes unless it receives revenue for its freight transportation—in other words, unless it receives all or a portion of the amounts shown under the column "Other" under the heading "Receivables"?

A. No, unless Hoboken receives a division considerably in excess of what the trunk lines have paid on Seatrain traffic, it would not be able to pay the trunk lines for the per diem, nor would it pay Seatrain on its notes for moneys advanced to keep it going. It would be bankrupt.

[fol. 252] Q. Is there anything further you want to say?

A. No.

Mr. McCollester: That concludes the direct examination.

Examiner Hoy: We will adjourn until tomorrow morning at ten o'clock.

(Whereupon, an adjournment was taken to September 20th, 1938 at ten o'clock at the same place.)

[fol. 253] Docket No. 27630

Hotel New Yorker, New York City, New York, September 21, 1938, at 10:00 o'clock A.M., D.S.T.

Before: Examiner Hoy, Examiner, Interstate Commerce Commission.

Met pursuant to adjournment.

APPEARANCES:

Same as previously noted.

[fol. 254] Examiner Hoy: We will resume, gentlemen.

Proceed with the cross-examination of Mr. Mathey.

Mr. Eshelman: Mr. Examiner, I might say that Mr. Pierson, who had planned to conduct the cross-examination of these witnesses, felt that he must go on home last night,

and I cannot say that he may not have other questions of this witness.

I am perfectly willing to ask, I think, the only question that I have of this witness at this time, and from what he said, I am inclined to think that he probably will not have—he may not have any questions of this witness and, therefore, that may wind this up; but I would not want to foreclose a request from him entirely in case the Examiner grants further hearings, or there is further hearing.

W. J. MATHEY was recalled, and having previously been sworn, testified further as follows:

Cross-examination.

By Mr. Eshelman:

Q. Mr. Mathey, in connection with your testimony about payments for lighterage service, payments by various of the lines, I think you spoke in a general way, perhaps and without making any exceptions.

Can you state as a fact that the Long Island was not included in what you said in the way of performing lighterage, or, rather, either performing or paying for the lighterage [fol. 255] of which you spoke?

A. I made no—I gave no testimony about any payments for lighterage service. My testimony ran to the allowances or divisions paid by the Trunk Line Railroads to various short-line railroads, like the New York docks, and the Bush terminal railroads, and the contract terminals in New York Harbor.

I didn't mention the Long Island in any way nor, as I recall, did I mention any payments for lighterage services.

Q. Well, take for instance, this situation: Suppose that a boat line operating from the Gulf ports into New York Harbor brings freight destined to a point on the Long Island?

A. Yes.

Q. It is the fact, is it not, that the Long Island neither lighters that freight or makes any allowance for the payment of that freight and that the obligation rests upon both lines to put that freight on cars on the Long Island; is that right?

A. I have no information as to how freight is handled between other boat lines and the Long Island Railroad.

I will say this: That so far as we are concerned, freight coming in by the Seatrain, going to a point on the Long Island Railroad in cars—that there are through rates published from our dock by the Trunk Lines, from our dock at Hoboken to points on the Long Island Railroad, and in that case the Trunk Lines must assume the cost from the dock/s, to or from the docks.

Q. Well, that would be, so to speak, an all-rail haul, and [fol. 256] would work out through the Erie?

A. Exactly.

Q. And around the regular route?

A. Exactly.

Mr. Eshelman: I think that is all I have of this witness.

Examiner Hoy: Are there any other questions of the witness on cross-examination?

(No response.)

Examiner Hoy: Is there any redirect, Mr. McCollester?

Mr. McCollester: Just one, Mr. Examiner.

By Mr. McCollister:

Q. In that connection, Mr. Mathey, I think this is already covered, and if it is not, I assume that it is well-known, but I want to be sure that the record is clear on this point: Generally speaking, Mr. Mathey, on so-called long-haul freight, the rates to Hoboken are the same as the rates to Manhattan, or to Brooklyn, or any other parts of the New York Harbor district, are they not?

A. That is correct.

Q. So that in asking that the rates to Hoboken be divided, as between Hoboken and the trunk lines, we are asking a division of the same rates that apply to other points in the New York Harbor area?

A. That is correct.

Q. And where the rates are lighterage free rates, the [fol. 257] same rates apply to Hoboken as apply to lighterage to the Bronx, or to other parts of the Harbor within the free lighterage limit?

A. That is correct.

Mr. McCollester: That is all.

Examiner Hoy: Are there any further questions of the witness?

(No response.)

Examiner Hoy: You are excused, Mr. Mathey.

Are you ready to proceed with the cross examination of Mr. Brush?

Mr. Eshelman: I am not, sir. I might say that Mr. Pierson intended to do the cross examination of Mr. Brush at whatever time was to be directed, but in discussing the matter with him last night, we are very thoroughly of the opinion that cross examination at this time would be somewhat wasteful of time, and that we couldn't make an adequate cross examination until we have had some opportunity to go over the material that has been introduced.

Examiner Hoy: Well, we will defer the cross examination of Mr. Brush at least temporarily.

Have you other witnesses, Mr. McCollester?

Mr. McCollester: Yes, I would like to call Mr. Hodkinson.

[fol. 258] E. A. Hodkinson was sworn and testified as follows:

Direct examination.

By Mr. McCollester:

Q. Just a few questions, Mr. Hodkinson: You are chairman, are you not, of the Division Committee of the Trunk Line Association?

A. I am.

Q. What are the functions of that committee?

A. The function of that committee is to deal with the divisional questions referred to it by the Freight Traffic Managers' Committee, or the General Freight Committee, or the Southern and Southwestern Committee.

We have no power to fix divisions. The Committee is only authorized to make recommendations to the committee from which it received the assignment.

The Committee was primarily set up to take care of the changed conditions that arose subsequent to the publica-

tion of the rates arising out of the Commission's findings in the Eastern Class Rate Case, I. C. C. Docket 15879.

Since that time other questions have arisen that the Committee has handled, made investigations and recommendations in connection with interterritorial divisional questions, and recently, in connection with the Ex Parte 123 increases, which I assume is the point you want to get me up to.

Q. Was the matter of the division of rates between the Hoboken and Trunk Lines referred to your committee?

[fol. 259] A. No, it was not, because those divisions had been settled long prior to the organization of the trunk Line Division Committee.

Q. Was the matter of the——

Mr. Eshelman: May I have that question again, Mr. Reporter?

(Question was repeated by the reporter.)

Q. Was the matter of the preparation of data for the defense of this case involving divisions on Seatrain traffic referred to your Committee?

Mr. Eshelman: Just a moment, Mr. Examiner. If the question goes to the matter as to why we are not ready to proceed at this time, then I submit that the question is objectionable, and it is purely beyond the scope of anything that is here being shown.

Mr. McCollester: I haven't gotten to that point.

Mr. Eshelman: You may not have gotten to that point, but if you are coming to that point——

Mr. McCollester: I may not come to it, I don't know.

The Witness: The answer is no.

Q. Has your committee been engaged at all in connection with preparations for the defense of this complaint?

Mr. Eshelman: I object to that question, Your Honor. If we are going into that, we will go into some other things too.

[fol. 260] Examiner Hoy: I do not think it is pertinent, Mr. McCollester, to determine the issues in this case.

Mr. McCollester: Well, I think if I can go a little farther, I can develop some facts that are pertinent, Mr. Examiner.

Mr. Eshelman: It seems to me he has gone too far already, Your Honor.

Examiner Hoy: I do not see the pertinency of that to the issues.

(Discussion of the record.)

Q. Have you personally been engaged in the preparation or asked to prepare data for the defense of this complaint, Mr. Hodkinson?

Mr. Eshelman: Mr. Examiner, I am going to object to this whole line of questioning unless there is some indication here as to what is sought to be developed.

Mr. McCollester: Well, I am not going to show my hand before I get to the point, but I want to find out——

Examiner Hoy: Well, he can answer the question.

Mr. Eshelman: May I hear that question?

(Last question was repeated by the reporter.)

Mr. Eshelman: Mr. Examiner, it seems to me that this line of questions can only go—"have you been engaged in the preparation of certain data? What have you prepared? What have you done? Where is it?" I would just like to [fol. 261] know whether or not we, in the preparation of our defense, are to be accorded the same rights as anyone else. We will put our testimony on the dotted line when the Examiner says it has to be done, but unless there is some showing here of relevancy to the issues in this case, I will object to the whole line of questioning. I will instruct the witness not to answer.

Examiner Hoy: Well, I think Mr. McCollester, I will sustain that objection too.

Mr. McCollester: May I have an exception please?

Examiner Hoy: Yes. You called the witness as your own witness. If you want to ask any pertinent question relative to the issues in the case, go ahead and do it.

Mr. McCollester: Well, I do want to ask him questions pertinent to the issues, but I am trying to qualify him, Mr. Examiner—as to whether he has made any studies.

Examiner Hoy: That will come out necessarily in the answer to it.

Mr. Eshelman: It had better wait for cross-examination.

Examiner Hoy: It has no pertinency to the issues in the case. I do not think those questions are pertinent to a determination of these issues.

Mr. McCollester: Well, Mr. Examiner——

Examiner Hoy: Or the answers to them.

Q. Mr. Hodkinson, have you stated to me, and to others [fol. 262] connected with the complainant, that the task of preparing data for the purpose of this proceeding had been referred to you?

Mr. Eshelman: I object to the question, Your Honor, as having nothing to do with the issues of this case.

Mr. McCollester: I am trying to qualify the witness to testify as to the issues in the case. If I cannot qualify him, all right.

Mr. Eshelman: You have to qualify him, as I understand it, if you can by proper questions.

Mr. McCollester: Isn't that a proper question?

Examiner Hoy: I do not think so, to qualify him. He has qualified himself as Chairman of the Division Committee of the Trunk Line Association.

Mr. Eshelman: We will admit his qualifications as to that.

Examiner Hoy: He can testify as to the issues. The defendants admit that he is qualified.

Mr. McCollester: All right, with that admission—is that admitted—that he is qualified to testify to the issues in this case?

Mr. Eshelman: Certainly, anything he testifies with respect to the issues in this case would be to his own knowledge, and, therefore, I assume, entirely qualified.

If you want to prove the correspondence, go ahead with [fol. 263] that.

Q. Mr. Hodkinson, in considering what are proper divisions as between carriers, of joint through rates, is the service performed by each of them one of the factors which you or your committee take into consideration?

A. Well, our committee has dealt primarily with the allowances to short line carriers, not as to the recommendations, having based solely upon the transportation service performed by those short-line carriers, without regard to the service performed by the Trunk Line carriers.

Q. Well, have you had nothing to do with divisions of rates between Trunk Line carriers, or the reasonableness of divisions of trunk line carriers?

A. Intraterritorially, do you mean?

Q. I don't care.

A. No, we have not had any occasion to deal with those matters. The trunk line carriers have between themselves long established lines of divisions, generally, expressed in percentages.

Q. How about inter-territorial?

A. Inter-territorially, I have had to do with the southeastern case between the Official carriers on the one hand, and the southeastern lines on the other, and between the Official lines and the southwestern lines on the other.

I have also had something to do with the controversy which is still pending between the western trunk lines on [fol. 264] the one hand, and the Official lines on the other.

Q. Now, in dealing with those matters, have you not considered as one of the pertinent factors the service performed, the amount or the cost of the service performed by each of the carriers or groups of carriers?

A. That is true, we have.

Q. Well, now, so far as this particular proceeding is concerned——

Mr. McCollester: And, Mr. Examiner, you, of course, appreciate that I may have a hostile witness and I would ask that the witness be requested to answer the question and not make a speech.

By Mr. McCollester:

Q. With respect to this particular proceeding, Mr. Hodkinson, and the divisions as between the Hoboken and the Trunk Line Railroads, have you read the complaint?

Mr. Eshelman: In 27630?

Mr. McCollester: Yes.

A. No, I haven't read it all.

Q. Have you read any of it?

A. Just skimmed through it.

Q. Have you been aware through skimming through it, or through being told, that the complaint alleges, in paragraph 12, that the amounts heretofore retained by Eastern [fol. 265] Trunk Lines Railroads have been, and for the future will be excessive, unjust, unreasonable, inequitable, and unduly preferential of said defendants, and will be for the future?

You are aware of that allegation in the complaint?

A. You have read it, and it is in the complaint, yes.

Q. In so far as the matter of service only may be pertinent to the issues here, is there any different service performed by the Trunk Line Railroads in transporting a car—we will say a Missouri Pacific car containing freight destined to Seatrain—than in performing a transportation of a Missouri Pacific containing freight going to the Pan-Atlantic?

Mr. Eshelman: I object to the question, Your Honor. He has not qualified the witness as an operating witness. He obviously is not such.

Mr. McCollester: Well, now I thought his qualifications to testify to the issues in the complaint were admitted.

Mr. Eshelman: Yes, as a traffic man, of course. He is not an operating witness.

Examiner Hoy: Can you answer the question as to whether there is any difference in the service performed by the trunk lines?

The Witness: I am not familiar with the physical operation. I am inclined to think that if anything——

Examiner Hoy: Well, now, you say you are not familiar with it. That is your answer.

[fol. 266] Q. From the standpoint of a traffic man, do you know of any considerations, so far as the service only is concerned, which would justify the trunk lines in demanding a higher division on Seatrain traffic than on Pan-Atlantic traffic?

Mr. Eshelman. Mr. Examiner, I think that is the same question, in that it relates—so far as service is concerned. However, since the question is phrased as to his knowledge——

Examiner Hoy: No, that is not the same question. Read that question, Mr. Reporter.

(Question was repeated by the reporter.)

A. I would say the difference in the terminal service performed warrants a higher allowance in connection with the break bulk lines than in connection with the Seatrain lines.

Q. Well, now, will you state what difference in service, so far as the trunk lines are concerned, there is—what difference in the service performed by the trunk lines therein

as between a car going to Seatrain and a car going to Pan-Atlantic?

Mr. Eshelman: Mr. Examiner, I object to that question.

Examiner Hoy: He has answered that question. He says he is not familiar with the physical operation.

Mr. McCollester: Well, he just testified, Mr. Examiner——

Examiner Hoy: As a traffic man.

Mr. McCollester: Well, as a traffic man, let him answer that question.

[fol. 267] The Witness: I am presuming——

Mr. Eshelman: The question is still objectionable, because the question as put is not primarily a question of a traffic man. You asked him if he knew of any considerations.

Mr. McCollester: As he proceeded——

Mr. Eshelman: He did not attempt to testify as to any service.

Examiner Hoy: Well, any testimony he gives on any of these points will have to be in connection with his statement as to service, that he is not familiar with the physical operations down there, and apparently knows nothing about the relative services.

Whether he answers the question as a traffic man or as an operating man, he apparently has no knowledge as to the situation down there.

By Mr. McCollester:

Q. Mr. Hodkinson, have you made any investigation—strike that. Have you had any conferences with operating people in regard to the divisions involved in this case?

Mr. Eshelman: I object to the question, Your Honor. It seems to me that the extent to which we put in a defense is something for ourselves to consider. If it is proper for each to go into just what the other did as a preparation of its case, regardless of whether or not he has yet been on the stand, or put in any case—that is something else.

[fol. 268] If conceivably it could be correct by cross examination, it certainly is not correct at this stage of the game.

Examiner Hoy: I think that question is objectionable. The answer, no matter what it would be would not be pertinent to the issues in this case.

He has qualified himself as chairman of the Divisions Committee. He does not know anything about the operating—He says he does not know anything about the relative operating conditions down on the Hoboken.

Now, if he has had conferences with operating people, and they told him something, I do not see where that could be pertinent to the issues in the case—what somebody told him.

Q. When was this—when did you first hear of this complaint, Mr. Hodkinson?

Mr. Eshelman: Mr. Examiner, I am ready to answer that question as to when——

Mr. McCollester: No, I am asking when the witness first heard of it, not when counsel did.

Mr. Eshelman: Mr. Examiner, I object to that question.

Examiner Hoy: I do not think that is pertinent. He says the issues in this case do not refer to his committee. I do not know whether he has ever heard of it up to today, officially. I presume he has.

Q. Were you asked to do anything in connection with this [fol. 269] case, Mr. Hodkinson?

Mr. Eshelman: I object to that question, Your Honor, as being the same question.

Examiner Hoy: Objection sustained.

Q. Mr. Hodkinson, did you advise me that you wanted more time to prepare for the defense of this case?

Mr. Eshelman: Mr. Examiner, I still object to that question.

Examiner Hoy: Objection sustained.

Q. Have you ever stated, Mr. Hodkinson——

Mr. Eshelman: Mr. Examiner——

Q. —that you considered that the Hoboken was entitled to $1.00 division?

Mr. Eshelman: Mr. Examiner, I object to that question.

Examiner Hoy: Objection sustained.

Mr. McCollester: Exception, Mr. Examiner. Can we not show what the divisions' man of the defendants has expressed?

Examiner Hoy: As Chairman of the Divisions Committee, he has testified here that this matter has never been referred to him, to either him or his committee.

Q. What do you mean, Mr. Hodkinson, by saying that the——

Examiner Hoy: That is the way I understood your answer—that the issues in this case—divisions between the Hoboken and the Trunk lines had not been referred to your Committee,

The Witness: And that is the correct and truthful answer.

[fol. 270] Q. Now, what do you mean by that—never been referred to your committee, for what purpose—for any purpose?

A. For any purpose.

Q. Your Committee has never been consulted on this subject?

A. No, sir.

Q. You have never been asked to prepare any data in connection with this case?

Mr. Eshelman: Now, that may be another question, but may I ask counsel, when he says "Hoboken" is he referring to the Hoboken as to all its traffic or any single portion of it?

Mr. McCollester: I am talking about this case.

Mr. Eshelman: All right, then, you mean only as to Seatrain traffic?

Mr. McCollester: That is right.

A. I was appointed by the freight traffic managers as Chairman of the Defense Committee for the purpose of this case.

Q. All right, now, when were you appointed as chairman of the Defense Committee?

A. I couldn't tell you exactly, in the absence of a file—sometime after the complaint was filed.

Q. Now, as Chairman of the Defense Committee, are—I suppose your duties would be to collect data, make a study of the facts, at least so far as the traffic angle of the case is concerned. Is that a fair statement?

A. Mr. McCollester——

[fol. 271] Mr. Eshelman: Mr. Examiner, I object to the question as obviously being one designed to lead up to the question of the adjournment.

Now, if the question of adjournment cannot be discussed with the Examiner, as between counsel, on the theory that we are——

Examiner Hoy: That is the time to discuss that question, Mr. McCollester, rather than on the record.

Mr. McCollester: Mr. Examiner, I have not said anything about adjournment.

Examiner Hoy: No, I know you haven't. If that is the purpose, why, the record is not the place to do it.

Mr. McCollester: I would disagree with you on that, but that is not what I am getting at. I may want to get on the record some of the facts, but I am not pursuing that now.

Examiner Hoy: That is all right, a statement of your position—to put it on the record, if you want to.

Mr. McCollester: Now, I have an unanswered question.

Mr. Eshelman: I withdraw my objection.

(Whereupon the last question was read by the reporter.)

A. The function of the Chairman of the Defense Committee, as you well know, Mr. McCollester, is to call the meeting of the other members of the Defense Committee, and counsel assigned to defend the case. At that time we [fol. 272] tried to map out a course of action.

Frankly, as far as this case is concerned, we have been at a loss as to just what points we would have to meet, and in every Divisions case that I have been in, we have always found it expedient and time-saving to have the complainants go on first and a reasonable adjournment——.

Examiner Hoy: Well, in other words, Mr. Hodkinson, the answer to the question is yes, without the speech.

By Mr. McCollester:

Q. Now, I assume, Mr. Hodkinson, that as Chairman of the Defense Committee, you have applied yourself with reasonable diligence to your duties, and have made an investigation of the issues and of the data available to you bearing upon those issues, is that correct?

Mr. Eshelman: Mr. Examiner, I object to that question as being obviously improper.

Mr. McCollester: I do not know why it is improper. I do not know why I cannot ask a defense witness——

Examiner Hoy: I think the question is proper. He may ask him something as a result of that reasonable application and diligence in the performance of his duties.

Mr. Eshelman: Mr. Examiner, just one minute on that: This whole question and line of questions goes——

Examiner Hoy: Let us get this off the record, or do you want it on the record?

Mr. Eshelman: Yes, I would like it on the record. This [fol. 273] whole question and line of questioning so far has gone to the question of whether or not an adjournment is proper in this case. Now, as to what is reasonable diligence, if we are to go into this case, and if it is pertinent in this case for us to justify to the complaint just where every man was on every particular time and occasion, I say it has nothing to do with this case, and I will instruct the witness not to answer.

Mr. McCollester: I have not talked about adjournment.

Examiner Hoy: Off the record——

(Discussion off the record.)

Examiner Hoy: The objection is overruled as to that last question.

Mr. Eshelman: Mr. Examiner, I instructed the witness not to answer that question.

(Discussion off the record.)

(Last question was repeated by the reporter.)

Mr. Eshelman: Mr. Examiner, I make the objection that that question is incompetent, that the question as to what he—his answer to that question, has nothing whatsoever to do with the issue of this case.

It is irrelevant. There is certainly no logical connection between what the possible answer could be to that and this case.

It is immaterial and wholly lacking in materiality. It is obviously a question designed not to develop the facts of [fol. 274] this record, but to create some side suggestion or emotion, and is obviously improper.

It is clearly incompetent; it is irrelevant; and it is immaterial. There is no doubt about that.

Examiner Hoy: Well, the Examiner thinks it is proper. It might qualify him for a following question, that is all. The answer to the question itself, of course, is not pertinent.

Mr. Eshelman: Let me ask this: Does Counsel——

Examiner Hoy: I will state further that the answer to the question has really been raised before because he couldn't have made a careful examination of the issues when he said he only skimmed through the complaint.

The answer, as I see it, in view of the previous statement—the question is already answered.

Mr. Eshelman: It is immaterial to me what has gone before but I still make the point—does counsel wish to take out any of the words of that question?

Mr. McCollester: No.

Mr. Eshelman: About the reasonable diligence?

Mr. McCollester: Well, I do not care which way he answers it. If he answers it no, that is all right for me, for one purpose, but I am expecting him to answer it yes.

Examiner Hoy: The objection is overruled, you may answer the question, Mr. Hodkinson.

The Witness: I understand——

[fol. 275] Mr. Eshelman: May I note an exception, please sir?

The Witness: I understand I am answering this question under the Examiner's direction.

Examiner Hoy: You are supposed to answer all questions that are asked you at one of these hearings, not only this but all of them.

The Witness: I would prefer not to answer that question without a specific direction from the Examiner.

Examiner Hoy: Well, the Examiner directed you to answer the question.

The Witness: We have had one or two meetings in connection with this complaint.

Q. Well, I am glad to have that information, but that was not exactly an answer to my question. I was asking about you individually.

A. I haven't acted individually at all. I have only acted in connection with the Committee.

Q. Have you had access to the records and files of the Trunk Line Association, and have you examined them, bearing upon the issues here?

Mr. Eshelman: Mr. Examiner, I object to that question and to the whole line of questioning. This proposition goes *entirely to this question of adjournment*—whether we should——

Examiner Hoy: Not necessarily, Mr. Eshelman. You remember that on the record here there is no question of ad- [fol. 276] journment.

Mr. Eshelman: I understand that.

Examiner Hoy: Now, the questions can qualify him as to his knowledge for some more direct question that will be pertinent to the issues. As qualifying the questions, I think they are all right.

Mr. McCollester: That is all they are intended for, Mr. Examiner—qualifying questions.

A. Well, I suppose by that you mean, Mr. McCollester, if I read the executive's file and all that correspondence and all the correspondence and the minutes of the various meetings that have been had with Mr. Brush, or without Mr. Brush. The answer to that is no, I haven't gotten around to it yet. So far as the history of the divisional structure with the Hoboken Manufacturers is concerned, that is on my desk at the present time.

I have gotten as far as the point where compromise and settlement was made by the late Mr. Collyer, at the time the 60 cents per ton allowance was established.

Q. I see. So that so far as the issues in this case are concerned, I believe you said you were appointed shortly after the complaint was filed—that would be some time in 1936 or 1937?

A. About 1937, I think.

Q. Yes, and since that time you have gotten, in your study [fol. 277] of the question, as far as the compromise settlement which was, as I recall it, about 1922.

A. 1922, I think. There has been no change since except as to the 123 increases, and whatever happened under the Ex Parte 445.

Q. Well, now so far as your studies went, were they not sufficient to enable you to express an opinion that the Hoboken was entitled to something more than 60 cents a ton on Seatrain traffic?

Examiner Hoy: In other words, the study went to about 1922, and were those studies sufficient to express an opinion

as to what would be just and reasonable division as of the present time?

The Witness: My conclusion is that the Hoboken Manufacturers is not entitled to a cent more on Seatrain traffic than it is on traffic delivered or originated on the Hoboken Manufacturers' Railroad.

Examiner Hoy: That is based on your studies of the situation up to 1922, you say?

The Witness: Yes, the history of the division——

Examiner Hoy: Well, that is enough.

Q. Now, when did you reach that conclusion?

A. I have had that right along.

Q. Right along. Do you want the record to be left—I am perfectly content if it is—but do you want it to be left [fol. 278] with the understanding that you have not looked into this subject at all with respect to anything since 1922?

A. You mean——

Q. So far as the issues in this case are concerned?

A. Oh, no, that is not exactly correct. I have done one or two other things.

Q. But so far as your examination of the Trunk Line files are concerned, you haven't gotten beyond 1922; is that what you meant?

A. Well, that is as far as the allowance that Hoboken—the history of the allowance to the Hoboken Manufacturers Railroad.

Q. Well, I am not sure that the record is altogether clear yet, Mr. Hodkinson. Have you examined at all the files relating to Hoboken allowances on Seatrain traffic?

A. As I say those are in the executive files, and I haven't read them yet.

Q. You know they exist, of course?

A. Oh, yes.

Q. There are very substantial files on the subject, are there not?

A. Yes.

Q. On the basis of what study did you venture the suggestion that this case might be compromised at $1.00 a ton?

A. I don't know that I ever——

[fol. 279] Mr. Eshelman: I object to the question as having no proper foundation. There is no showing in this record that there ever was made such a suggestion.

Mr. McCollester: I think that is a good objection.

Q. Did you ever make such a suggestion?

A. I have always been of the opinion that it is just as well in cases of this kind to see how far apart you are, and see whether some compromise might be effected. I do not think I ever directly committed myself that there should be a compromise on anything, just held out the possibility that some of our people might, and might not—I couldn't answer for them—might consider that phase of the question.

Q. Well, in making that—you made that suggestion to somebody, did you not?

A. I think I threw it offhandedly to Mr. Mathey over the telephone.

Q. Now, in making that suggestion, how did you arrive at the figure of $1.00 a ton?

Mr. Eshelman: May I ask when was that made?

Mr. McCollester: All right, ask.

Mr. Eshelman: Will you ask?

Q. When was that, do you recall, approximately?

A. I think it was about the time the case was set for hearing in September.

Q. Well, if I may refresh your recollection——

[fol. 280] Examiner Hoy: This case was set for hearing in June.

The Witness: I know, but it was changed.

Mr. Eshelman: No, it has never been changed.

Examiner Hoy: Never been changed.

Q. If I may refresh your recollection, was it around the middle or latter part of July, to be exact, July 22?

A. It may have been then. Mr. Mathey kept a note of the times. I suppose it is all right.

Q. That is right. And just how did you arrive at $1.00 a ton as the figure that you suggested to Mr. Mathey, as a possible basis of compromise?

A. Well, I have been going right along—that was the attitude of the Hoboken Manufacturers on Seatrain traffic. They were looking for an allowance of $1.00.

Q. Did you have any reason to believe that it might be satisfactory to the trunk lines also?

Mr. Eshelman: Mr. Examiner, it seems to me that if this is at all to be considered in the nature of an offer of compromise, that very clearly, it is objectionable on that ground; and furthermore as to what individuals may have suggested or may have thought, certainly has nothing to do with the extent of the legal obligation here of these various railroads.

There is no suggestion, as I understand it, that Mr. Hodkinson was here authorized to make any such statements or that he was acting within the scope of his duties in so doing.

[fol. 281] Mr. McCollester: I do not know whether he was or not.

Mr. Eshelman: Well, let me make it very clear: Are you simply calling him as a witness—well, we will say.

Mr. McCollester: He is my witness at the present time.

Mr. Eshelman: All right, I understand that, but, I mean, you are simply calling him as an expert in these matters to testify as to his views, is that the idea?

Mr. McCollester: As Chairman of the Defense Committee.

Mr. Eshelman: Well, will you develop from the witness then as to whether he talked to Mr. Mathey in that respect as chairman of the Defense Committee?

The Witness: Well, frankly I did not. I have known Mr. Mathey for 25 years. We have been friendly, and I had no idea that the telephone conversation would go any further than between him and me. It was simply an attempt to see as to just what the issues were, what his attitude was, prior to a meeting of the Defense Committee. I wasn't acting in any official capacity at all.

Q. All right, Mr. Hodkinson. Now, then, acting in your personal capacity, individually, we will say, I assume that when you acted you did so in the light of your experience as a traffic man—how long have you been in the railroad business by the way?

A. Oh, over 25 years.

Q. Did you not say to Mr. Mathey at that time, speaking, if you want to, just as an individual, that in your opinion it [fol. 282] would be foolish to go to a hearing on this complaint and that you thought, individually, that the Hoboken was entitled to something, based upon whatever knowledge you had of the situation?

A. If I dare proceed entirely without prejudice to this defendant——

Q. Did you say it or did you not?

A. I cannot recall exactly what I said and I didn't think for a moment that the telephone conversation would be transcribed, but that it would be looked upon as a privilege communication.

Q. Will you answer me as to whether you made such a statement or did not make such a statement?

Mr. Eshelman: Mr. Examiner, it seems to me that this is obviously improper.

Examiner Hoy: I do not see where it has any materiality or weight.

Mr. McCollester: Maybe not much weight, Mr. Examiner, but it may have a little weight.

Mr. Eshelman: It seems to me it is wholly lacking.

Examiner Hoy: He is qualified. You can answer the question, Mr. Hodkinson.

A. I probably may have said that to him, but, as I say——

Q. Well, you did say that, did you not, Mr. Hodkinson?

A. I probably did.

[fol. 283] Q. Well, now, don't say "probably".

A. All right, I did, and I resent its having been repeated. It will be a lesson to me hereafter.

Q. All right.

A. I think it is exceedingly bad faith.

Examiner Hoy: All right, you have answered the question.

Q. All right, you may think that. Now, did you make any representations to the Examiner that there was a possibility of compromise of this case?

Mr. Eshelman: Mr. Examiner——

Examiner Hoy: Now, that I do not think——

Mr. McCollester: All right, I will strike that.

Examiner Hoy: I probably misunderstood Mr. Hodkinson when he was down there.

Mr. McCollester: I do not want to involve the Examiner in this, but I——

Examiner Hoy: You will not involve the Examiner. He is here, and Mr. Hodkinson said, when he was down with Mr. Pierson—he talked about a possibility of settling a case. I thought he meant this case, but as most of you

know I wasn't feeling very well that particular week, and possibly did not pay any close attention as I might, but after reflection I determined that it was the case that had not been set for hearing, that involved Ex Parte 123 in-
[fol. 284] crease, that Mr. Hodkinson was referring to as to a possibility of settlement.

The Witness: That is correct, Mr. Examiner.

Mr. McCollester: All right, I am glad to have that.

The Witness: My remarks in connection with the case were in connection with the complaint filed on August 1. That is as to 123 increases.

Q. Well, then, I have just one more question, Mr. Hodkinson—no, strike that.

Mr. Hodkinson, you have heard Mr. Mathey testify that the rates involved here to Hoboken are the same, at least on long-haul traffic as the rates to New York. You agree to that?

A. I agree to that; that is a correct statement.

Q. Freight going to the Morgan Line, for example, if it comes over the Erie Railroad is lightered to Morgan Line, is it not?

A. It is.

Q. Freight going to the Brooklyn terminals is delivered to the Brooklyn terminals at the Erie Railroad float bridge; is that not correct?

A. I understand it is correct.

Q. Now, with respect to freight going to the Brooklyn terminals, do you, as a traffic man, or as Chairman of the Defense Committee, or chairman of the Divisions Committee, or in any capacity you want to make the statement, know of any service which the trunk lines performed on freight going to Seatrain that is more than the service they
[fol. 285] perform on freight going to the Brooklyn terminals?

Mr. Eshelman: I object to the question, Your Honor, as being——

Q. (Continuing): Which would justify a higher division of whatever may be those same joint through rates.

Mr. Eshelman: I object to the question, Your Honor, as being obviously incompetent. What it might cost to make one delivery is not necessarily an indication of what it costs to make another delivery.

Examiner Hoy: That is no reason why the question is incompetent. If he knows of any difference between the service performed by the Trunk lines——

Mr. McCollester: By the trunk lines?

Examiner Hoy: ——by the trunk lines, I presume you mean going to Brooklyn to the rail end, so to speak.

Mr. McCollester: Well, the rail end is in Jersey.

Examiner Hoy: Yes, in Jersey.

The Witness: I have already said that I am not competent to give any information along operating lines.

Q. And so far as you have gone in this case, as the Chairman of the Defense Committee, is it a correct statement that you have not considered at all the service performed by the trunk lines?

A. That is correct.

Mr. McCollester: That is all.

[fol. 286] Examiner Hoy: Is there any cross examination?

Mr. Eshelman: I just have one or two questions.

Cross-examination.

By Mr. Eshelman:

Q. Mr. Hodkinson, in what you said to Mr. Mathey, was that upon the assumption that it be found that the obligation of the line haul carriers was to make delivery alongside Seatrain?

A. That is correct, yes.

Q. And what you said to him was not based upon any cost study of which you had knowledge?

A. Oh, no.

Mr. Eshelman: Those are all the questions I have.

Mr. McCollester: That is all.

The Witness: I did not know there was a cost study made at that time.

Examiner Hoy: Is there any redirect?

Mr. McCollester: No.

Mr. Eshelman: That is all.

Examiner Hoy: You are excused, Mr. Hodkinson.

(Witness excused.)

Mr. McCollester: I just have one question I want to ask Mr. Brush on further direct, Mr. Examiner.

GRAHAM M. BRUSH was recalled, and having been previously sworn, testified further as follows:

[fol. 287] Direct examination.

By Mr. McCollester:

Q. Mr. Brush, I want to ask you—you testified yesterday that the New York Central had deducted $1.00 per ton before pro rating on all Seatrain traffic. Have any of the trunk lines actually paid to Hoboken $1.00 per ton on Seatrain traffic, and if so, what ones?

A. Yes, in the beginning two of the trunk lines paid $1.00 for a short time, the D. L. and W. and the Central Railroad of New Jersey. To be exact, D. L. and W. paid it to February, 1933 (and the Central Railroad of New Jersey to January, 1934.

Q. Central Railroad of New Jersey paid it for over a year?

A. Yes.

Mr. McCollester: That is all on direct.

The Examiner will understand—I just want to make this clear: That so far as the complainant is concerned, the complainant's interest is in securing a reasonable and adequate division of the joint rates which will afford it proper and fair compensation.

Now, it is to us relatively immaterial whether that is achieved by a uniform division on all freight, such as the dollar basis, which was recently in effect, which was $1.00 per ton on all freight, both that moving under lighterage free rates and that moving under rates that did not include unloading or loading of the cars, or shipside delivery, or whether the allowance or division is, as we ask, $1.35 out [fol. 288] of lighterage free rates, and only 60 cents out of the non-lighterage free rates.

We think that the latter is preferable, and more fair to all concerned.

Mr. Healy: As to the latter, your complaint is now satisfied. You are getting exactly what you are asking.

Mr. McCollester: We are not getting $1.35.

Mr. Healy: You are getting 60 cents on the non-lighterage free freight. That is what you are asking for.

Mr. McCollester: Yes, but we are not satisfied as to the non-lighterage free freight unless we get $1.35 on lighterage

free freight. That is what I wanted to make clear, Mr. Examiner.

Examiner Hoy: Yes.

Mr. McCollester: We think that is the more logical basis, because then the allowance is proportioned to the railroad undertaking covered by the tariffs, and it will work out more fairly where the volume of lighterage free freight and non-lighterage free freight fluctuates, but if the Commission sees fit to make a uniform allowance on all freight, provided it is adequate, that is sufficient for our purposes.

Examiner Hoy: There is one question I would like to ask Mr. Brush.

In connection with your testimony of yesterday or the day before, you testified that certainly in recent years, any- [fol. 289] way, there has been, or there was at the present time, I understood you to say, a substantial volume of traffic in connection with Seatrain that must be loaded and unloaded, such as—you mentioned flour, I believe, as one of the commodities.

Would you mind stating for the record the approximate per cent of your traffic that must be loaded and unloaded that way, if you can, or something that would indicate the proportion that moved that way?

I think your testimony was a substantial amount, or quite a large proportion, or something like that—one of those general terms.

The Witness: Yes, I think I can give you a fairly accurate figure, but I wish to say this: That it could only be as to what has happened.

Examiner Hoy: Yes, of course.

The Witness: Because, as I have explained, there are factors beyond the control of Seatrain Lines and Hoboken which make it necessary at times to load or unload in whole or in part.

The freight so loaded or unloaded in whole or in part has fluctuated even on the same commodity, depending upon customs, depending upon plant quarantine, for example.

Before prohibition ended, we used to have to unload cars to see whether there wasn't any liquor in them. Occa- [fol. 290] sionally, we would run into things in connection with stow-a-ways.

I merely point out that the answer would have to be, let us say, as of 1937, and that the answer for 1938 might be just entirely different.

In tons; I believe it would be between five and ten per cent.

Mr. Eshelman: Of the Seatrain traffic?

The Witness: Of the Seatrain traffic, and that does not include any loading or unloading on Seatrain local traffic where we are in competition with the water lines, for example.

Mr. McCollester: By local traffic, you mean traffic that does not move over the trunk lines?

The Witness: That is correct. For example, obviously any freight coming in via Seatrain that was going to be delivered to a harbor point by a lighter has to be unloaded. Vice versa, coming in by lighter, it has to be loaded.

Also, take sugar, as an example: When you are coming up from New Orleans, or coming up from Cuba, the steamship lines' delivery is on their docks. Therefore, to compete, we have to make a corresponding delivery which means that we must unload the car.

Now, all of that is not included in that five to ten per cent.

Examiner Hoy: And about what percentage of your total traffic is local traffic?

[fol. 291] The Witness: That has varied from 40 to 55 per cent over the six years, in tons.

Examiner Hoy: Of the total traffic?

The Witness: The total Seatrain traffic in and out of New York.

Mr. Eshelman: What are those percentages?

The Witness: Vary from 40—

Examiner Hoy: Vary from 40 to 55.

Mr. Healy: Is all of that traffic embraced within the five and ten per cent entitled to free lighterage delivery?

The Witness: Yes, because otherwise there would be no obligation on the part of them to do any loading or unloading or handling.

Mr. Healy: He would do it if the shipper asked him to do it, and was willing to pay for it.

The Witness: Oh, yes, but I was not—I don't remember any such instance, and if there was, it certainly would not affect the figure.

Examiner Hoy: Those are all the questions I have, Mr. Brush.

Mr. McCollester: No other witnesses.

Mr. Brush is ready for cross examination.

(Discussion off the record.)

Examiner Hoy: Have you any——

[fol. 292] Mr. McCollester: No other witnesses.

Examiner Hoy: No other witnesses.

We will have a five minute adjournment.

(Whereupon a short recess was taken.)

After Recess

Examiner Hoy: All right, gentlemen, let us proceed.

Mr. Gault: I don't know how long the cross examination is going to be and, of course, we are not at all concerned with the matter of adjournment, but we have a witness that will take about ten minutes, who we would like to put on, and then we will fade out of the picture.

Examiner Hoy: All right.

S. H. Gillette was sworn and testified as follows:

Direct examination.

By Mr. Gault:

Q. Please state your name.

A. S. H. Gillette.

Q. State your position please.

A. General freight agent for the Chicago and Northwestern Railroad.

Q. You have been with that company for a long time, have you not?

A. Yes, I have.

Q. Over 50 years?

A. So long that I don't like to discuss it.

[fol. 293] Examiner Hoy: Over 50 years?

The Witness: Yes.

Mr. McCollester: We will concede his qualifications to testify as to traffic.

By Mr. Gault:

Q. Mr. Gillette, your experience has been as a traffic man handling primarily divisions in recent years, has it not?

A. Yes.

Q. You attended numerous cases on behalf of the Western Trunk Line Railroad or a group of Western trunk line

railroads, involving short line divisions in the eastern territory?

A. Yes.

Q. For whose account is your testimony to be in this case?

A. My testimony is for the account of a group of western trunk lines:

The Ahnapee & Western Railway Company.
Chicago, Burlington & Quincy Railroad Company.
Chicago Great Western Railroad Company.
Chicago, Milwaukee, St. Paul & Pacific Railroad Company.
Chicago, Rock Island & Pacific Railway Company.
Chicago, St. Paul, Minneapolis & Omaha Railway Company.
Illinois Central Railroad Company.

Q. Of those railroads, the Great Western, the Milwaukee, the Rock Island, and the Chicago Northwestern are being operated by the Federal Courts, are they not?

[fol. 294] A. Yes.

Q. Of course, your testimony in addition is for the Chicago Northwestern Railroad and these other railroads?

A. Yes.

Q. Go ahead with your statement, if you will.

A. In this case, the complainant, the Hoboken Manufacturers Railroad Company, seeks increased divisions of the rates in which that company participates. It would seem necessary, therefore, to first consider what the tariff situation is as between the Hoboken Manufacturers Railroad Company, the complainant on the one hand, and the carriers operating west of Chicago, Chicago Junctions, Peoria, Milwaukee, Manitowoc, on the other hand. A study of the tariffs shows that the Hoboken Manufacturers Railroad Company is a participating carrier in the following tariffs:

B. T. Jones 218-K ICC 3028 (Commodities).
B. T. Jones 245-F ICC 3055 (Grain).
B. T. Jones 3490-F ICC 2896 (Iron and Steel).
B. T. Jones 384-F ICC 3007 (Wool and Mohair).
B. T. Jones 509-A ICC 2550 (Glass Rates).
Kipps 76-F ICC 2152 (Potatoes).
Kipps 242-A ICC 2286 (Potatoes).
Kipps 248 ICC 2250 (Potatoes except sweet potatoes).

Kipps 341-C ICC 2836 (Newsprint paper and wallpaper).
Kipps 324 ICC 2546 (Plaster).
[fol. 295] Kipps 329-C ICC 2864 (Commodities).
Kipps 367 ICC 2767 (Seeds).
H. G. Tolls 1-S ICC 1417 (Westbound Tariff).
H. G. Tolls 4-O ICC 1401 (Westbound Tariff).
H. G. Tolls 14-C ICC 1405 (Commodity).
H. G. Tolls 17-P ICC 1409 (Lumber).
H. G. Tolls 27-S ICC 1408 (Lumber).
H. G. Tolls 29-B ICC 1415 (Commodity).
H. G. Tolls 30-A ICC 1412 (Commodity).
H. G. Tolls 38-B ICC 1374 (Class).
H. G. Tolls 39-E ICC 1416 (Class).
H. G. Tolls 40-F ICC 1396 (Territorial Directory).
H. G. Tolls 41-F ICC 1402 (Territorial Directory).
H. G. Tolls 43-E ICC 1404 (Fruits and Vegetables).
H. G. Tolls 44-E ICC 1403 (Fruits and Vegetables).
H. G. Tolls 46-F ICC 1407 (Grain).
H. G. Tolls 61-J ICC 1368 (Arbitrary Circular).

Q. Continue.

A. Generally speaking all tariffs are subject to individual lines' East-Bound Billing Books issued by the Eastern Lines which provide for routes, rate bases and division bases to which stations on the Hoboken Manufacturers Railroad Company are subject. Particular reference is given to Erie Railroad Billing Book No. 27, I. C. C. A-6868, page 119, which provides for New York rate basis and New York [fol. 296] percents, with routing via the Erie Railroad, Weehawken, New Jersey, thence the Hoboken Manufacturers Railroad Company. Also the same provision is carried in New York Central Billing Instructions No. 2, I. C. C. 2, on the 12th revised page 170, which provides for New York rate basis and New York percents with routing via West Shore, Weehawken, New Jersey and the Hoboken Manufacturers Railroad Company. A similar application of the New York rates and percents is published by the Pennsylvania Lines in Star Union Line Basing Book I. C. C. 13, with routing via Jersey City.

The New York rates published in conjunction with the Western Lines on the one hand, and the Erie Railroad, New York Central Lines and Pennsylvania Lines, as an illustration, on the other hand, are made applicable to deliveries

on the Hoboken Manufacturers Railroad Company by virtue of these Guide Books published by the New York line haul carriers in which the New York basis of rates and percentages are made applicable to the stations on the Hoboken Manufacturers Railroad Company as indicated above.

At this particular point I desire to call the Commission's special attention to the fact that the Western Lines do not at this time and never have participated in any allowances to the Hoboken Manufacturers Railroad Company out of the through rates in the entire list of tariffs heretofore named. The question was never raised with respect to the [fol. 297] lines west of Chicago participating in any allowances to the Hoboken Manufacturers Railroad Company until the original complaint in I. C. C. Docket 16672, in connection with which the Western Trunk Lines listed in the foregoing were made respondent carriers. In that case the Commission found that the western lines beyond the major breaking gateways between the Eastern and Western Lines should not be required to participate in any divisions allowed the Hoboken Manufacturers Railroad Company. (Reported in 155, I. C. C. 330, at page 635.)

The Western Lines have no knowledge as to what basis of earnings under the application of the Eastern Lines Guide Books accrues to the Hoboken Manufacturers Railroad Company. We do not know whether the Hoboken Manufacturers Railroad Company receives from the proportion east of Chicago, a percentage division, a flat arbitrary or a switching charge under the arrangements that are in effect as between the line haul roads serving New York, Jersey City or Weehawken, New Jersey and the Hoboken Manufacturers Railroad Company. We are not consulted by any Eastern Lines in such arrangements as they may have made from time to time and have no voice in any decision that may have been reached with respect to the divisions. Our only interest has been in the level of rates as between points west of Chicago on the one hand, and New York on the other hand, and the division of such rates [fol. 298] as may be actually agreed to east and west of our gateways with our immediate connections. Under the circumstances we should be dismissed as parties defendant in this proceeding and no order should be issued which will in any respect alter the earnings now accruing to the lines

west of Chicago, Chicago Junctions, et cetera. In support of this statement we desire to call to the Commission's attention the fact that the situation at New York as between the Hoboken Manufacurers Railroad Company on the one hand, and the Erie Railroad, New York Central Lines and Pennsylvania Lines east of Chicago on the other, differs in no respect whatsoever from situations existing west of Chicago as between line haul carriers and short haul or terminal lines. When the Western Lines make division arrangements east and west of Chicago with their immediate connections, they expect to and do assume all obligations from their proportion that may arise in applying joint through rates with terminal or short haul lines in the territory west of Chicago. They do not expect that if a group rate basis is extended beyond rails of the Western Trunk Line carriers, the Eastern Lines' proportion must be reduced in order to assist in paying adequate revenue to such terminal or short haul lines. Therefore, where the terminal or short haul lines are located in Eastern territory and there is a dispute over divisions, as in this case, we maintain that this dispute must, under the general scheme of [fol. 290] divisional arrangements, be confined to the proportion accruing out of such joint through rates east of Chicago, Peoria, Milwaukee, Manitowoc, are recognized as major breaking gateways.

Q. Mr. Gillette, have you some information as to some 17 short lines connected in Western Trunk Line territories? If so, will you name those lines?

A. That is a list of our short lines with our own railroad (indicating document).

Q. Yes, having direct connection with the Chicago and Northwestern or the Omaha Railroad.

A. There is the Clinton, Davenport and Muscatine Railway, and the Cedar Rapids & Iowa City Railway, and——

Mr. McCollester: Is it necessary to name these? We will admit there are short line railroads connected with the Western Trunk Lines. I can't see they are material otherwise.

Examiner Hoy: They might be listed in the record.

A. (Continuing.) Chicago, Aurora and Elgin Railroad; Chicago, North Shore and Milwaukee Railroad; Des Moines & Central Iowa Railroad; Escanaba & Lake Superior Rail-

road; Fort Dodge, Des Moines & Southern Railroad; Hillsboro & North Eastern Railway; Illinois Terminal Electrical Lines, Peoria, Illinois to St. Louis, Missouri; La Salle & Bureau County Railroad; Litchfield & Madison Railway; Mason City & Clear Lake Railroad; Marinette, Tomahawk, [fol. 300] and Western Railroad; Tama and Toledo Railroad; Milwaukee Electric Ry. & Light Company; Waterloo, Cedar Falls & Northern Ry.; Wisconsin Power & Light Company.

Q. Those lines range in length from three and a half miles to 171 miles; is that correct?

A. Yes.

Q. Some of them are electric lines?

A. Yes.

Q. Within the last ten years, have the divisions allowed any of those railroads been increased and if so are eastern connections called upon to participate in any way?

A. No, they were not. There have been made increases to the Clinton Davenport and Muscatine Railway and Cedar Rapids and Iowa City Railroad and to the Escanaba & Lake Superior Railroad.

Q. And our connections east of Chicago were not called upon to participate in those increases or in the original division?

A. No, they were not.

Mr. McCollester: May I make this point: I think this testimony is irrelevant and immaterial here. It goes to an issue of the division of the rates after whatever division is accorded to the Hoboken as between the eastern roads on the one hand and the western roads on the other hand. That, I think, is an issue which is beyond the scope of the complaint, because all the complaint asks is a specific basis of divisions between the Hoboken on the one hand and all [fol. 301] of the roads west of the Hoboken on the other, and I don't ask for any subdivision of the western road division.

Examiner Hoy: You brought these western roads in as defendants, as parties to joint rates.

Mr. McCollester: That is right, and all that the witness is testifying to is that because of the divisional arrangement between them and their eastern connections they shouldn't be required to pay any portion of any increases that may be

allowed. That is something that grows out of the eastern subdivision.

Examiner Hoy: The eastern carriers may want them to participate.

Mr. McCollester: Doesn't that go to the subdivision as between the defendants, which is not in issue in this case? After the Commission has fixed how the rates should be divided between the Hoboken and the roads west of Hoboken on the other hand, it can determine the balance between the several defendants. That is not an issue with which we are in the least concerned.

Examiner Hoy: I will agree that if there is not in issue here anything except what you state, what proportion Hoboken should get out of the divisions of the eastern territory lines, yes, then it is immaterial. I don't know that they take that position, that they are not in issue.

Mr. McCollester: I stated that the issue was as to what [fol.302] proportion the Hoboken should receive, and what proportion the roads west of Hoboken should receive including all western trunk lines as a unit, and we are not concerned with the subdivision west of Hoboken as between the eastern railroads, the Official Territory Lines and the Western Trunk Lines on the other hand. That is something for them to scrap out among themselves, and it is to that scrap to which this testimony is directed. We don't care how they settle that.

The Witness: What are your objections then? It is a matter between the Eastern and Western Trunk Lines.

Mr. McCollester: It is irrelevant and immaterial.

Mr. Gault: You made us defendants.

Mr. McCollester: Because you were parties to the rates to be divided.

Examiner Hoy: I understand you are asking for divisions of joint rates to apply to points here. What is left after Hoboken gets its division, the other parties may not be at one on the rates.

Mr. McCollester: That is an issue involving another division that is between them. Your Honor will recall that in the New England Division case, the New England lines brought the complaint against all the railroads west of New England, and one of the arguments in defense was that the case did not call upon the Commission to subdivide the por- [fol. 303] tion west of the New England, as between the C. F. A. Lines and the Western Trunk Lines. The Court said

that that was not necessary, the only issue was how to divide the rates between the New England on the one hand and all the railroads on the other.

Examiner Hoy: This testimony won't take very long and I would like to have it in the record. I am not sure as to just that issue.

By Mr. Gault:

Q. Go ahead, Mr. Gillette.

A. In no case was the revenue of the lines east of Chicago affected. Either when the divisions were originally established or in cases where their divisions were affected. We believe that this subdivision of the proportion west of Chicago is a matter solely of concern or interest to the lines west of Chicago and that the Eastern Lines should not be consulted with reference to this subdivision and that they have no interest therein since they do not participate in any allowance to these lines. This being true, we can see no reason why the proportion west of Chicago should be changed as a result of this petition because the Western Lines have no direct dealings with the Hoboken Manufacturers Railroad Company, have no connection with that line and have no interest or voice whatsoever in how the proportion east of Chicago may be subdivided through negotiations of the roads east of Chicago, and hence this complaint, insofar as the carriers west of Chicago are con-
fol. 304] cerned should be dismissed. The western carriers are not even in a position to know whether the Erie, New York Central, Pennsylvania, or other Eastern Lines have been justified in extending the application of the New York rate basis to deliveries on the Hoboken Manufacturers Railroad Company and have no interest in whether that rate basis should apply to such deliveries or otherwise. We believe that any application of the New York rate by the line haul carriers beyond their own deliveries should be a matter of subdivision of the proportion applying east of Chicago, Peoria, Milwaukee, Manitowoc, et cetera, which are recognized as major breaking gateways. If this view is not taken in such cases as here presented the result will seriously impair the facility with which rate adjustments have heretofore been handled. It will mean that the Western Lines will have to give serious consideration to new terminal arrangements in connection with joint through

rates which the Eastern Lines see fit to make in their own territory and it will also mean that the Eastern Lines will have to give similar consideration to any arrangements the Western Trunk Lines may see fit to make with terminal or short haul lines in western territory.

As further illustrating what I have in mind, I would like to introduce at this time Exhibit No. 28.

Examiner Hoy: It will be received as exhibit No. 28.

[fol. 305] (Exhibit #28, Witness Gillette, received in evidence).

Q. Go ahead, Mr. Gillette.

A. Exhibit No. 28, is a list of some of the principal short line in Pacific Coast territory. The Trans-Continental rates to and from these points to points on the Hoboken Manufacturers Railroad Company first divide on percents applying east and west of Chicago, Peoria, Milwaukee, Manitowoc. The remainder accruing west of Chicago and those junctions is first subdivided east and west of the Missouri River on Minnesota Transfer, then the remainder accruing west of the Missouri River or Minnesota Transfer is subdivided with the short lines shown in the exhibit on all traffic originating on or destined to points on those lines. The Western Trunk Lines are not concerned in the subdivision of the proportion accruing east of Chicago as between the Eastern Lines and the Hoboken Manufacturers Railroad Company, nor are they interested in or concerned with the subdivisions accruing west of the Missouri River or Minnesota Transfer as between the Trans-Continental Lines and the carriers shown in this exhibit. In fact, the Western Trunk Lines do not even know what divisions exist between the Eastern Lines and the Hoboken Manufacturers Railroad Company or what the divisional basis is of the lines west of the Missouri River or Minnesota Transfer with the carriers shown in this exhibit.

[fol. 306] Q. Is it my understanding from this exhibit 28 that these divisional allowances to short lines in the North Pacific Coast territory and the South Pacific Coast territory are taken care of by the Trans-Continental Lines?

A. Absolutely.

Q. And the Western Trunk Lines wouldn't participate in that?

A. No.

Mr. McCollester: I think that is going pretty far afield from the issues in this case.

By Mr. Gault:

Q. Take up your statement at the bottom of page 6, if you will.

A. Therefore, if, in this case, the Commission should decide to accord the Hoboken Manufacturers Railroad Company an increase in their present allowance and the Commission does not allocate such increase to the lines east of Chicago, Chicago Junctions, Milwaukee and Manitowoc, et cetera, it will mean that the lines west of Chicago out of their division of these Trans-Continental rates will not only absorb 72½ percent of whatever increases, if any, may be allowed by the Commission; but may carry with it the absorption on the part of the lines west of Chicago of 72½ per cent of the present allowance to the Hoboken Manufacturers Railroad Company, no part of which the lines west of Chicago have ever assumed heretofore.

Stated in another way, as an illustration——

[fol. 307] Examiner Hoy: I don't think it is necessary to state it in another way.

A. We desire to call the Commission's attention to petition of the Missouri & North Arkansas Railway for increased divisions, I.C.C. Docket 13345, original report 66 I.C.C. 47, in which the order ran only to direct connections with the Missouri & North Arkansas Railway. Also petition of the Kansas City, Mexico & Orient Railway for increased divisions, I.C.C. Docket No. 13668, decided February 9th, 1925, in which the order increasing the divisions to the Orient Road specifically allocated the increase to its direct connections.

Q. Was this question before the Commission in the case known as Short Line Divisions in Official Territory decided November 13, 1934, reported in 205 I.C.C. 61, at pages 65 and 67?

A. Yes.

Mr. Gault: We have a statement from the Commission's report.

Examiner Hoy: It is not necessary to put that in the record.

By Mr. Gault:

Q. And just summarizing that, the Commission granted in that case the relief that we are asking for here, is that right?

A. Yes, that is correct and that so provides in the decision of the Commission.

Mr. Gault: Cross-examine.

Examiner Hoy: Any cross-examination?

[fol. 308] Mr. Eshelman: Just one question.

Cross-examination.

By Mr. Eshelman:

Q. Mr. Gillette, are there some cases where western lines now participate in prorating Hoboken Manufacturers' divisions? For instance, I take it that the lines of the Milwaukee and Illinois and perhaps other situations——

A. Not to my knowledge. I have a faint recollection that some kind of an adjustment was made on silk. On the general traffic, as a whole, I have no knowledge of any such arrangement.

Mr. Gault: I think, if I may suggest that in reference to where the Milwaukee participation in eastern traffic through the Terra Haute gateway perhaps——

Examiner Hoy: Yes, and the Illinois Central would be in the same fix at Indianapolis.

By Mr. Eshelman:

Q. Would it be correct to say that to the extent that the western lines join with eastern lines in prorating the Hoboken Manufacturer's Division that you are not seeking in this case to change that situation but what you are saying is that you do not want any of the change shall put any of the burden on you now where you do not now have it?

A. That is correct.

By Mr. McCollester:

Q. And so far as this situation that you have described is [fol. 309] concerned, to the extent that the Western Railroads do not now participate in changes in divisions made between the Eastern roads and their short line connections,

that is due to the divisional arrangement existing between the western roads on the one hand and the eastern roads on the other?

A. That is correct. There is an understanding between the Eastern Trunk Lines, C. F. A. Lines, that they will take care of their own short lines, and by the same token the Western Lines do the same west of the so-called major breaking getaways. That is an understanding and has never been questioned. It has been in effect for a great many years.

By Mr. Eshelman:

Q. I take it that was a voluntary proposition to the extent that it obtains?

A. Yes, an agreement between the lines east and west of the major breaking gateway.

Q. Not a test as to the Commission's powers or what position they may take in a given case?

A. I am not going to question the Commission's powers.

By Mr. McCollester:

Q. Do you intend to have the Commission understand that the tariffs which you listed at the beginning of your testimony are the only tariffs of the Western roads in which the Hoboken Manufacturers Railroad participates?

A. Only, as checked by the Chicago, and Northwestern Railroad against the tariff which we have on file.

[fol. 310] Q. Is it not a fact, and I think you intended to state this, but I am not sure, that this was the intention of a portion of your testimony, that even where the Hoboken does not appear as a participating carrier in the Western Trunk Line tariffs, if the western roads publish rates to New York, those rates are applicable likewise to Hoboken by virtue of the provisions of the eastern railroads terminal tariff?

A. I don't believe I can answer that question because I don't exactly know what you have in mind.

Q. Is it not a fact that besides the rates in which the Hoboken is named as a party, there are numerous rates published by the western railroads applicable to through transportation between points on their lines and Hoboken, New Jersey?

A. If there are included in any of the tariffs that the Western Trunk Lines publish, it is on request of those lines, the Hoboken as well as any other short line.

Q. That was not in answer to my question.

A. Those are the facts in connection with any rate the Western Trunk Lines might publish.

Q. I am not asking why the lines are published. I am asking if any rate on the Western Trunk Line to New York would apply to Hoboken?

A. I don't know without examining my tariff.

Q. You haven't examined the tariff to that effect?

A. I have examined those tariffs where the Hoboken Road is a party to them. That is the only list that I have quoted, is those that the tariff show have been made a [fol. 311] party to the rate."

Q. That raises what was a question in my mind as to what you meant by your testimony here. You said the New York rates published in conjunction with the western lines on the one hand and the Erie, New York Central and Pennsylvania lines as an illustration, on the other, are made applicable to two deliveries on the Hoboken Manufacturers Railroad by virtue of these guide books published by the New York Line Haul carriers.

I assumed that you meant to testify just as I have said, that there were many rates from points on the western trunk lines to New York that would be applicable to Hoboken even if the Hoboken Manufacturers Railroad is not a party to your western trunk line tariffs. Is that what you meant to say?

A. No, I didn't mean to say that at all.

Q. Then, just what did you mean by the statement on your direct examination that I quoted?

A. My statement goes to this: That through those guide books they extend these rates to the Hoboken Railroad. They go to do that through that medium and not necessarily directly in the tariff.

Q. Then they do apply to transportation, we will say, from a point in North Dakota to Hoboken, even if the Hoboken isn't a party to the rate tariff published by the western lines, isn't that so?

[fol. 312] A. The eastern lines have to do that. We don't publish them.

Q. I am not asking that. I am asking if the rates don't apply.

Examiner Hoy: Is that important?

Mr. McCollester: It is important if the Western Trunk Lines are going to argue that they have concern in this case because Hoboken is a party only to the tariffs listed here. The Western Trunk Lines would be affected by a change in division on all rates which would be applicable on transportation between Western Trunk Line points and Hoboken, except for this divisional arrangement, and there are many rates of that kind which are not included in this list the witness has given.

Mr. Gault: I think the witness has explained that there may be cases where by terminal tariffs applicable they are made to delivery on the Hoboken Railroad.

Examiner Hoy: Even though the Hoboken is not a party to the rate tariff?

Mr. McCollester: I thought he meant to say that. Now, I understand he does not mean that.

The Witness: I meant that.

Examiner Hoy: If that is what you mean, it is clear.

Mr. Gault: That is all.

I assume Exhibit No. 28 is in evidence.

[fol. 313] Examiner Hoy: Yes. Have the defendants any testimony to put in?

Mr. Eshelman: We have not our testimony at this time and if appropriate I think we should like to discuss the reasons for prompting us to ask for an adjournment, and then I think we will be in a better position to determine the matter of the cross examination.

Examiner Hoy: Do you want to discuss it on or off the record?

Mr. Eshelman: It just depends on whether you want to have these to present to the Commission. I am ready to discuss them on the record.

Examiner Hoy: We will first discuss them off the record and then probably if we get on the record we can boil them down so that the record will not be too extensive.

(Discussion off the record.)

Examiner Hoy: Defendants have requested an adjournment here and after extensive informed discussion by the parties as to whether such an adjourned hearing should be had at which defendants would put in their evidence and witness Brush cross examined, the Examiner, consid-

ering all of the reasons given for and against an adjourned hearing, and bearing in mind that from the Commission's standpoint the object is to get an adequate record upon which to decide the case, also bearing in mind that in his opinion the defendants have been somewhat delinquent in [fol. 314] presenting their case after it was set for hearing and various other points that were made by the parties, the Examiner, in an effort to be just to all of them, feels that there should be an adjourned hearing to three weeks from Monday, which is October 17th, at which time the defendants will be expected to put in their evidence and the record, so far as the Examiner is concerned, will be closed.

Let the record show that free copies of this record will be supplied to Mr. Pierson for the defendants, and Mr. McCollester for the complainant.

(Whereupon at 1:00 o'clock P. M., the hearing was adjourned to October 17th, 1938, at 10:00 o'clock A. M., at the same place).

[fols. 315-316] Docket No. 27630

Hotel New Yorker, New York City, New York, October 20, 1938, at 10:00 o'clock A. M.

Met pursuant to adjournment.

Before: Examiner Hoy, Examiner, Interstate Commerce Commission.

Appearances: Same as previsously noted, with the following addition:

Francis R. Cross, appearing for the Baltimore and Ohio Railroad.

[fol. 317] Examiner Hoy: Gentlemen, we will resume the hearing in Docket No. 27630, Hoboken Manufacturers Railroad Company versus the A. C. Y. Railway Company and others.

I guess probably the first thing will be the cross-examination of Witness Brush.

Mr. Cross: I don't know whether there was an appearance entered on my behalf at the last hearing.

Francis R. Cross, for the Baltimore & Ohio Railroad.

Examiner Hoy: We will proceed with the cross-examination of Mr. Brush.

GRAHAM M. BRUSH resumed the stand, and having been previously sworn, testified further as follows:

Cross-examination continued.

By Mr. Pierson:

Q. If my recollection is correct, I believe you stated that Seatrain commenced operations to and from Hoboken on October 6th, 1932. Is that correct?

A. That's correct.

Q. What other ports does Seatrain serve?

A. Seatrain serves Havana, Cuba and New Orleans, Louisiana.

Q. The terminal is south of New Orleans, is it not?

A. South of the center of the city.

Q. Is it located at a point known as Belle Chasee?

A. That is correct.

[fol. 318] Q. On what side of the river?

A. The west side.

Q. Approximately how far south of New Orleans is it?

A. In a direct line?

Q. Yes.

A. I would say about seven miles in a direct line of the center of the city.

Q. At the present time how many vessels does Seatrain operate?

A. Three.

Q. What is the carrying capacity of those vessels expressed in number of loaded cars?

A. Two carry a hundred each and one carries 95.

Q. How frequent are the arrivals and sailings at Hoboken?

A. The regular schedule calls for one arrival and one sailing a week and our third vessel we are averaging about one arrival and one sailing every three weeks or a little better.

Q. How long would the vessels remain in port at Hoboken? On the average?

A. Tuesday morning until Wednesday afternoon.

Q. Approximately how many hours? Can you express it in hours?

A. Yes, from nine A. M. until five P. M.

Q. Nine A. M.?

A. 32 hours.

Q. 9:00 A. M., for example, on Tuesday to 5:00 P. M. on Wednesday?

[fol. 319] A. That's right.

Q. Does the loading and unloading take place continuously or is it restricted to the daytime?

A. Well, that is usually restricted to the day time.

Q. Are there occasions when the work is performed during the night hours?

A. Yes.

Q. I suppose the economy of your operation depends upon loading and unloading the boats with the greatest expedition.

A. The greatest economy is in saving time in port.

Q. Now, you presented in evidence as Exhibit No. 9, seven photographs showing the Seatrain vessel in New York and the loading of the ship. Am I correct in my recollection that you stated the cars of heaviest weight were placed in the hold of the ship and the lighter loaded cars on the upper tracks?

A. That is generally true, yes.

Q. Now, are the cars grouped or arranged in the vessel according to destination?

A. To some extent but not very much. There are 32 tracks and 100 cars and you can see that your chances of distributing your load is a very simple matter.

Q. Take a southbound movement from Hoboken. Where would you ordinarily place the cars destined to Havana, would those be on the upper deck?

[fol. 320] A. No, not necessarily.

Q. Well, you wouldn't sandwich those cars in between cars, for Belle Chasse, would you?

A. You wouldn't sandwich except between two cars. The tracks are only three cars long. What you would do is place a Havana car either on the cradle or next to the cradle. In other words, you wouldn't put it all the way back down on the track and then put two New Orleans cars ahead of it unless it is a necessity.

Q. You place it in a position so that on the southbound movement it would be readily removed without interfering with cars for Belle Chasse?

A. Just the same as an ordinary ship stopping at two ports. It wouldn't load the cargo for the first port of call at the bottom and the other port of call at the top.

Q. Are the cars placed in the vessel according to commodity?

A. Yes. Just the way cargo on an ordinary vessel is placed in accordance with commodity, refrigerated or ventilated goods in the ventilated space. We have spaces equipped for ventilation or refrigeration and those cars go into those spaces.

Q. I notice in one place a tank car. Do you have any special place on board where you place inflammables?

A. Yes, superstructure deck usually. Inflammables can be loaded on the main deck or superstructure.

[fol. 320-a] Q. Does the size of the car have anything to do with the place where it is spotted in the vessel?

A. You take an extremely long car and that could not be put down on the lowest deck or the tank top or between decks; it could be put anywhere between the upper two decks.

Q. On the long cars you mentioned, do you ever remove the couplings to conserve space?

A. Not to conserve space, to save you trouble in unloading cars when you send cars that are too long.

Q. Are there any restrictions against the size of the cars in your tariff?

A. Yes, there is. Some times we have to pull out the whole draw head in order to fit the car in.

Q. What are the clearances, do you know?

A. As shown in the diagram, in general the clearances are about 11.6 in width and from 15 to 17 in height. Do you want the length clearance? 56 feet, I believe is the length clearance.

Q. You referred to certain tariff restrictions with respect to the size and length of the car. Can you tell me what those tariff restrictions are?

A. No. I know they are in the tariffs. I can't give you the number.

Q. You mean you can't give me the length of the car or the height of any such restrictions as that?

[fol. 321] A. Yes, I just have. I think approximately.

Q. Well, those were the physical restrictions. What I am asking about now is the tariff provisions which restrict the length and size of the cars that the Seatrain will handle.

A. That is the physical restrictions, one and the same thing.

Q. Those are the figures that are contained in the tariffs?

A. Yes. In other words, you people have clearance diagrams over your road, for instance, on the belt coming to Hoboken you can't take particularly high cars, there are restrictions there against high cars under the tunnel. You have clearance diagrams in your tariffs; Hoboken has it and all railroads have it and Seatrain has it.

Q. Those figures you just gave are the figures that are contained in your tariffs?

A. Yes.

Mr. McCollester: That is your best recollection?

The Witness: Yes.

By Mr. Pierson:

Q. Do you handle any open top cars?

A. Yes.

Q. To any considerable extent?

A. Well, what do you mean by "considerable *expense*"? Ten per cent?

Q. Can you give me the approximate number you handle per vessel?

A. I should say open top equipment ran somewhere [fol. 322] around 10 per cent. That's flats and gondolas of all sorts.

Q. Now, on your exhibit No. 9 you show the Niles crane used at Hoboken. Are cranes of similar character used in Havana and Belle Chasse?

A. Yes, I would say so. The structure on which the traveling crane operates is somewhat different at the other two ports.

Q. The same general principle though?

A. Same principle.

Q. Does Seatrain own the crane at Havana?

A. Yes.

Q. Does it operate it at the expense of Seatrain?

A. Yes. It does in all three ports.

Q. Is the crane at Havana located on leased property?

A. That's correct.

Q. Will you give me the name of the owner of that property?

A. The United Railways of Havana.

Q. At Havana does Seatrain pay a berthing or switching charge?

A. I don't think I can answer that question in that way. I will describe our Havana contract.

Q. All right.

A. The Cuban rail rates are not like American rail rates. They do not include the unloading or loading of cars in any instance; when the railroad does it there is a plus charge.

Q. What is that plus charge?

A. Oh, it varies from 30 cents a ton up to about $1.00 a [fol. 323] ton depending upon the commodity in accordance with railroad tariffs. Seatrain's contract with the United Railways is similar to the Florida Eastcoast. We pay them a flat rate per car for all services and facilities such as the dock.

Q. Does that amount to $17.00 per railroad owned car?

A. That amounts to an average of about a little over $10.00 per car. It is a sliding scale. The top rate is $17.00. If we should bring just one car a year to United Railways we would get charged $17.00 per car for the use of their dock. For their customs facilities, the customs yard, including their switching operations that were performed in that whole area, customs area.

Q. Is that a correct statement that Seatrain pays $17.00 per railroad owned car and $15.17 for private cars for the first 5,000 cars in and out, and for all cars in excess of 5,000 per year the charge is $7.00 per car. Is that a correct statement?

A. That is approximately correct. That is, for the facilities and the services which I have mentioned. Switching incidental, that you are driving at, is the negligible part of those expenses.

Q. It covers all charges and Seatrain passes those amounts to the United Railways Company?

A. That's right. Same as the Florida Coast.

Q. Commission report, docket 25727, 226 I. C. C. 7, states [fol. 324] that the loading facilities at Belle Chasse are owned by Seatrain and are located on property of the New Orleans and Lower Coast Railroad Company. Is that a correct statement?

A. That's right.

Q. Now, is the crane at Belle Chasse operated and maintained at the expense of Seatrain?

A. That's right. It is the same in all three ports.

Q. Well, at Havana, Seatrain, as I understand it, owns the crane and also at Belle Chasse it owns the crane?

A. That's right.

Q. At Hoboken, as I understand, the crane is owned by Hoboken and leased to Seatrain?

A. That's right. Seatrain loaned them the money to build it on their ground and to get 6 per cent on their investment.

Q. Now, what does Seatrain pay the New Orleans and Lower Coast Railroad for the use of facilities at Belle Chasse?

A. Pay them $175.00 for the use of the dock per docking. That is, including incoming and outgoing ships. No time is specified. It could be for one day or one week as long as the vessel is at the dock.

Q. That charge represents the approximate out of pocket switching expense to the carrier at that point, does it not?

A. I couldn't tell you.

Q. Didn't the New Orleans and Lower Coast Railroad Company tell you that the classification of switching cost was [fol. 325] approximately $175.00 per vessel and you objected to the distinction of the charge as a switching charge and asked that it be referred to as a berthing charge?

A. I would suggest that you put in the record the memorandum to Mr. Denning on this subject. Let's get the record straight.

Q. I am asking you a question.

A. Well, go back to the beginning in 1928.

Mr. Pierson: I submit that is——

The Witness: Okay if you want the facts.

Mr. McCollester: I think he is entitled to answer the question in his own way, Mr. Examiner.

Mr. Pierson: I think he ought to make his answer responsive to my question.

Mr. McCollester: I think it will be if you give him a chance.

Examiner Hoy: I think Mr. Brush should answer the question and then give what explanation of his answer he desires to give.

The Witness: Mr. Examiner, he has asked me, as I understand, whether the New Orleans and Lower Coast sometime told me what some switching expenses were, whether they equalled $175.00. I will answer the question yes. But that

isn't the purpose of his question. I know, I have been through it three or four times with him.

By Mr. Pierson:

Q. I am satisfied with that answer.

[fol. 326] A. Okay. Sometimes they told me some switching costs cost them $175.00, that's correct. Sometimes they told me some switching costs cost them $150.00, too. Since then they have told me a lot of things.

Q. Does that complete your answer?

A. That's the best answer I can give to that kind of a question.

Q. I am satisfied with the answer but I didn't want to cut you off. Does Seatrain perform any switching at either Havana or Belle Chasse?

A. Seatrain?

Q. Yes.

A. No.

Q. Do you recall the amended application of September 23rd, 1932, to the Interstate Commerce Commission in finance docket No. 9598?

A. I remember the application.

Q. Do you recall whether or not the amended application I referred to stated that the cost of the Niles crane at Hoboken was $50,730 and that the expense of erecting, riveting and painting the structural steel in the crane was $7,685.00, making a total of $58,415.00 as the cost of that crane?

A. I can say definitely that was not the statement. In addition to that you got the foundation to build; you left [fol. 327] that out. Those were approximately correct for the figures you have stated. Those amounts were correct for the parts of the crane as stated but not for the crane. In addition to the crane and the steel structure there was the foundation, the transformer, the power lines and various other expenses.

Q. Did that include the motor?

A. I take it you mean the crane motor. There are about seven of them. On the Hoboken crane there are only three motors.

Q. As I understand your answer, you take no exception to the figure of $58,415.00 as the cost of the crane alone plus the cost of erection. You merely make the point that there were other items involved.

A. Yes, but then there is the steel structure. You haven't got your steel structure in there. $50,000 is what we paid Niles for the trolley. $7,000.00 is what we paid the steel contractor to erect the structure. $10,000 and some odd was what we paid American Bridge for the structure. I don't remember the foundation costs which we paid to the foundation contractor or the other costs but you are talking only about a part of the crane.

Q. Do you consider the sub-structure a part of the whole crane?

A. It is. It is all tied in with—it is all designed in to-
[fol. 328] gether.

Q. Well, can you give me the approximate figure of all these items covering the cost of the crane?

A. Yes, approximately $85,000.00.

Q. Now, at page 83 of the transcript you stated that Hoboken paid as rent to the lessors $48,000.00 a year in round figures and that the taxes on that property amounted to $54,000.00 in round figures. From that you reached the conclusion that the rent was reasonable. Were those rental charges aggregating $48,000.00 determined in 1906?

A. Some were and some were not.

Q. Well, you recall that probably, as I understand it, from the Hoboken Land and Improvement Company and from the Hoboken Railroad Warehouse and Steamship connecting company, under a 99 year lease, dated 1906. Now, I ask you if it is not a fact that those leases made in 1906 specified the rentals which produced the figure of $48,000.00?

A. No.

Q. What other rent do you pay?

A. We don't pay any other rent. The leases provided for the rents to be adjusted from time to time. It has been so adjusted. There are sliding scale rates based on tonnage.

Q. When was the rent last adjusted?

A. Well, on the tonnage it is adjusted every year. It was
[fol. 329] adjusted about two weeks ago. On the property, I guess it is next year that it comes into an adjustment, 1939 or 1940. I think it is 1940.

Q. This figure, $54,000.00 for taxes you mentioned, that represents taxes, I suppose, on the property held under the leases as well as any improvements made on the leased railway property subsequent to 1906, and particularly the improvements you made during the summer of 1932.

A. No, I testified quite to the contrary. Taxes were on the property which was leased and that's all.

Q. That also includes the improvement on the property, does it not?

A. We don't lease the improvements from the land owner.

Q. When you pay $54,000.00 a year, is it not a fact that that amount includes the land, the tracks and ballast and all physical items on the land?

A. No, because some has been put on subsequently; it is our property. We pay the taxes for that. The taxes on the crane are not included in the $54,000.00.

Q. Is this $54,000.00—does this $54,000.00 represent the taxes on the leased railway property only?

A. That's correct.

Q. It does not include taxes on any property in fee by the Hoboken?

A. That's correct. In other words, to make a true comparison you have to put the taxes down as to what you lease.

[fol. 330] Q. Some of these improvements you made in 1932 were located on property leased from the Hoboken Land Improvement Company, were they not?

A. That's right, the crane was, for example.

Q. Were there any tracks placed on Hoboken Land Improvement Company property not leased to Seatrain?

A. Wait a minute; there is no lease to Seatrain by Hoboken Land Improvement Company.

Q. Not covering property, title which is in the name of the Hoboken Land and Improvement Company?

A. Will you ask the question again.

Mr. Pierson: Will you read the question?

(Whereupon the reporter read the last question.)

A. The answer is no. Because there is no property leased to Seatrain by the Hoboken Land and Improvement Company.

By Mr. Pierson:

Q. No. The point is that Hoboken Land and Improvement Company leases certain property through Hoboken Manufacturers Railroad Company and Hoboken Manufacturers Railroad Company in turn sub-let certain property to Seatrain.

A. I understand. I will divide my answer in two parts. There was a re-arrangement of tracks on the land above water on property—on plot B, a part of which was rented to Seatrain by the Hoboken Railroad. There was also a re-arrangement of tracks on the trestle which is on land under [fol. 331] water which was leased in part to Seatrain by the railroad. That carries us up to March, 1937. From that date Seatrain no longer leased any land above water, in whole or in part, and leased all of the land under water, namely, the trestles and berth?

Q. Now, coming to the switching operation on the Hoboken. I think you have described them on page 89 and page 97 on the record. Have the switching operations you described been substantially the same since 1932?

A. Yes.

Q. You think there were no important changes in the method of switching operations since 1932?

A. No.

Q. You stated that on southbound cars the Erie delivered the cars to Hoboken Manufacturers Railroad on an interchange track along the Easterly line of Park Avenue?

A. That is correct.

Q. I believe you also stated that the car was classified first to segregate those going south at 14th Street from those to be delivered north of 14th Street. Where is that classification performed; on what track?

A. It is performed in the so-called main yard, namely, this yard running from, say a line from Bloomfield Street westerly and around the corner up to the Erie interchange.

Q. After the cars destined to Seatrain are separated out from the other cars, where are they placed? I am referring [fol. 332] now to southbound cars.

A. Yes. They are generally placed easterly of the line of Bloomfield Street.

Q. How far east? Down as far as Hudson Street extended?

A. Yes.

Q. Are the Seatrain cars classified as to destination, commodity, weight of the car and so forth?

A. Yes, in general.

Q. Where does that classification work take place, in that portion of the yard west of Bloomfield Street extended?

A. Well, theoretically it takes place easterly. Actually they are using both of those yards, as you will see from the

map. Theoretically there are two yards there. All classifications take place either side of the line of Bloomfield Street.

Q. Now, how many tracks are used for holding Seatrain cars in what I believe you call the supporting yard? Would it embrace all of the tracks between Bloomfield Street and Judson Street?

A. If nothing else was in there, that yard will hold approximately 100 cars. I could say yes to that question in general.

Q. The capacity of the yard is practically equivalent to [fol. 333] the carrying capacity of the boat?

A. Yes. In other words, when the Seatrain ship came along and offered to interchange 200 cars of traffic in the course of 32 hours, the facilities at Hoboken were not sufficient to make the interchange. They re-arranged their tracks and I think gained some car space just the same as we have done in connection with the D. L. and W. float bridge. We re-arranged our tracks down there and have gained some car space. We need additional tracks to handle additional traffic.

Q. In performing the classification work, what type of types of power do you use?

A. Diesel Electric switch engines.

Q. Exclusively.

A. Yes.

Q. Does the Hoboken Railroad operate the gas locomotive between the hold yard and the cradle at the present time?

A. Yes.

Q. Do you use a gas locomotive for any service other than moving the cars between the hold yard and the vessel?

A. Occasionally; not very often.

Q. For what purpose?

A. When a single car is being moved, it is advantageous to use that little locomotive anywhere.

Q. Am I correct in my understanding that the cars are moved between the cradle and the hold yard by the gas [fol. 334] locomotive, one at a time?

A. Usually one at a time, but not always. It depends upon whether there are two cars to be handled or three cars. Some times, for example, we are loading and dis-

charging the ship at the same time, in which case two cars are handled or even more. Generally we try to make it a one-car operation.

Q. In the—strike that. Is the classification and switching service performed by the Hoboken Railroad on the car of lighterage free freight the same as on a car that is non-lighterage freight free? Suppose you have two cars received from the Erie interchange at Hoboken destined for a southbound movement via Seatrain. One of the cars is moving under rates governed free lighterage and the other is not. Is there any dissimilarity in the physical service performed by Hoboken on one car as distinguished from the other in the switching and classification service?

A. I would say in so far as strictly switching is concerned there is little or no difference. Although the obligation is quite different.

Q. I am speaking about the operating service rendered in handling the car from the Erie interchange to the cradle.

A. That is correct. Now, may I explain my answer? On the lighterage free car, the Hoboken, under its tariffs, is required to hold that car for a given free time and the [fol. 335] steamship may order it to its terminal whenever it wishes during that time. It is also the practice of the port, all ports, so far as I know, and in Hoboken, to deliver cars to steamships in the order in which they can load their ships on lighterage free traffic. So that you may find under the illustration that I have given that a lighterage free car might be held up until a certain hour of the day, or, we will say, two such cars, and you might get an order, for example, to have one car come first. Now, if there happened to come along with those cars a car of freight which was not lighterage free, then the Hoboken does not consider its obligation to deliver that non-lighterage free car in any particular order, but it is compelled to hold it until it is ordered. Now, as a practical matter—Hoboken could deliver all cars to Seatrain in any order that they please and by reason of having 32 tracks, Seatrain could do all the classifying with its crane. If it did, it would merely slow down Hoboken and you would have an engine setting on the docks waiting a little bit longer between each operation, and I want to make it perfectly clear what you say there has been so much talk about all of this classifying of cars, that Hoboken does

for Seatrain as if they didn't do it for everybody else—as if all railroads didn't do it for everybody else.

I want to make it clear that Seatrain happens to be a [fol. 336] ship where it isn't necessary but it is desirable of the railroad, itself, to do it as well as being obliged to.

Q. Do you mean to say that the crane or elevator shown in Exhibit No. 9 is capable of classifying the cars on the vessel?

A. That's quite right. Let's leave out the Hoboken. If the Erie brings us a hundred cars and pushes them down one at a time, I don't know what order they are in, where they are going, what is in the cars or anything else, we will take them one right after the other and we will classify them right there with the crane. Of course, the first we will say is a heavy car of steel. We will put it down in the hold. The cradle comes out and the next car is lighter, we will put this in between deck, and the next car is something else and we will shift the crane around. You got 32 tracks. So I don't get all this ado about classifying. Actually, if Seatrain insisted upon doing it that way, Hoboken would probably object and say, "You are just slowing us down."

Q. Under the present practice, as I understand your testimony, there are two classifications, the first classification which results in segregating out the Seatrain cars and then a secondary classification whereby they are placed on the tracks in the hold or supporting yard, grouped as to destination, commodity and weight of car and length of car and so forth.

[fol. 337] A. That is in general true.

Q. Now, you say that the secondary classification could, if necessary, be performed by Seatrain with its Niles crane?

A. If Seatrain wanted to make a contract with the Hoboken to do—to take over Hoboken's obligations to bring cars to them at the time and in the order that they want to, Seatrain could do the work. It would be a very foolish thing to do because it would slow down everybody and cost Hoboken more. Hoboken does that, incidentally, for all other steamship lines.

Q. I believe you stated that Seatrain vessels might arrive at 9:00 o'clock A. M. on Tuesday morning and depart at 5:00 o'clock P. M. on Wednesday afternoon. Now, are these cars destined for southbound movement via Seatrain

received during the week from Wednesday, 5:00 o'clock P. M., to the following Tuesday at 9:00 o'clock A. M.?

A. Theoretically, yes; most of the cars come in at the last minute. The average detention on incoming cars is only about a day on Seatrain traffic where it is over three days on other steamship traffic.

Q. But they do come in in certain quantities day after day until the vessel arrives?

A. Very small quantities. It may be due by the railroad, for instance, falling down in making their schedule. A great many of our cars come in Wednesday morning. [fol. 338] We are getting them all day. We get a cut of cars from your people, the Erie, at three o'clock. That's the last cut. There are always three or four cars we are pushing along all day long trying to get them in that last cut, and if they miss, they are delivered and they sit there a week. Also you occasionally get a shipper who wants to bank his bill of lading and he doesn't care about schedule. We may hold a car there for, up to a week, in a case like that.

Q. Do you perform this secondary classification on the cars as they are received, in whatever quantity they may arrive?

A. No.

Q. The secondary classification takes place when?

A. It takes place usually Wednesday morning.

Mr. Healy: It is a contemporaneous operation in connection with the loading of the ship, is it not?

The Witness: Yes, many times. In other words, the cars are all ready to be swung over to an Erie interchange and shot right down to the ship. In other words, practically all of the work is done on Wednesday.

By Mr. Pierson:

Q. Now, we have been talking about the classification by Hoboken Manufacturers Railroad of southbound traffic via Seatrain. Let's come back now to the northbound traffic from Seatrain to Hoboken Manufacturers Railroad. How is that traffic handled? What is the operating service on that?

[fol. 339] A. When a car lands on the dock by means of the cradle, the gasoline locomotive pushes it off the cradle

and up into the Seatrain yard, the yard which was re-arranged.

Q. When you refer to Seatrain yard, I have in mind that you mean that portion of it——

A. From Bloomfield Street to Hudson Street. That was the yard that was re-arranged.

Q. That was done in 1932 with funds obtained under these notes covered by the finance docket I mentioned?

A. That's right.

Q. You may proceed.

A. Those cars are pushed up one at a time into that yard by the gasoline locomotive and as a track is filled up, one of the Diesel electric locomotives comes along and pulls the track into the main yard.

Q. That main yard is west of Bloomfield Street and extending around, along Park Avenue?

A. That's correct. Then, in general, the cars are split into several groups, those that are going to the Erie interchange, those that are team tracks or so-called Seatrain local freight and occasionally on L. C. L. car that goes downtown.

Q. Does the Hoboken perform any classification work on the northbound cars destined to the Erie?

A. Yes, splits them out.

Q. You mean it merely segregates cars destined to the [fol. 340] Erie from all other cars?

A. That is correct.

Q. But you don't make any classification of the cars going to the Erie?

A. No. In other words, the Erie splits those cars down to—some to the West Shore, some to the Pennsylvania and so forth and so on.

Q. I suppose the Erie performs that secondary classification work over in its Weehawken Yard, shown on your map, exhibit 1?

A. That's correct. I will say here that,—well, that's all right, scratch it.

Mr. Pierson: May we have a recess for a couple of minutes?

Examiner Hoy: Yes. We will take a five minute recess.

(Whereupon a five minute recess was taken.)

After Recess

Examiner Hoyt Proceed.

By Mr. Pierson:

Q. I believe Mr. Brush has a further explanation that he wishes to make in connection with cars moving northbound from Seatrain to the Erie interchange.

A. I said that in general the cars move direct to the interchange of the Erie after being switched into the Seatrain so-called Seatrain yard by the gasoline locomotive. That would pertain to domestic freight only, or [fol. 341] freight in which there is no customs or agricultural department inspection. On foreign freight, in most instances, there is. The cars coming in Seatrain must be opened for inspection of one sort or another so that those are set aside, switched out to convenient tracks for inspections, and then pulled to the Erie interchange or switched to the team tracks of the local business. In connection with the Erie interchange, as I testified, Hoboken does not classify the cars as to the line haul carriers. The Erie does that. That operation consists of the Erie segregating their own cars and taking the balance and pushing them on to a West Shore track.

Q. Is there any substantial amount of traffic held for inspection?

A. Yes. The majority of our traffic is foreign traffic. The majority of that has to be inspected inbound. In fact, practically all of it.

Q. When you refer to foreign traffic, do you mean traffic northbound coming from Havana?

A. Yes.

Q. Are your ships northbound from Belle Chasse, and stopping at Havana, loaded mostly with traffic originating at Havana?

A. No, I say that the majority of the cars handled are cars containing foreign traffic. I can't give you in tons, but I would say that it would run in tons somewhere around or in cars, 55 cars will be Cuban traffic and 45 cars [fol. 342] domestic traffic both in and out.

Q. And on the northbound move then, Hoboken makes a classification to separate the cars to be held for inspection and those that go direct to the Erie?

A. That's correct.

Q. Will you look at your exhibit No. 19. Now, on page 2, paragraph 1, there is a provision that the Hoboken Manufacturers Railroad will place cars for Seatrain at such point or points nearest the string-piece or platform of steamship's pier or elsewhere as may from time to time be mutually agreed upon. Now, under this contract provision I have just read, what point or points had been mutually agreed upon as the point or points of delivery?

A. The point of delivery between the Hoboken and Seatrain is the loading cradle which is ship sling for Seatrain. Or else whereas may from time to time be mutually agreed upon, to my knowledge, has never been used. That, however, is put in all of our contracts or Seatrain puts that in all of its contracts, for example, at Belle Chasse. Occasionally we have a situation where it is necessary for Seatrain to keep possession of a train after it has been discharged from the ship. It obviously cannot keep possession of the car without laying operations on the trestle or the pier and therefore a point of interchange is selected out in the yard where it is convenient [fol. 343] to hold the car for that particular car and that car remains in Seatrain's possession. I don't recall that we have ever had to use that in connection with Hoboken.

Q. Well, so far as the operation of the contract is concerned, up to the present time Seatrain and Hoboken have considered the cradle as the point of interchanges and no other point or points have been agreed upon. Is that a substantially correct statement?

A. That is correct.

Q. Now, at page 96 of the record, you made a brief reference to the newly inaugurated interchange at the D. L. and W. float bridge. When was that service commenced, approximately?

A. Two or three days before I testified. In other words, about September 15th.

Q. Now, will you——

A. (Continuing): 1938.

Q. Will you fully describe the interchange service between the Hoboken Manufacturers Railroad and the D. L. and W. at the float bridge on traffic moving in connection with Seatrain.

Mr. McCollester: Now, Mr. Examiner, in the first place that is not cross-examination because we didn't go into it

on direct and it will take us very far afield from the issues in this case because there are many considerations that have entered into that arrangement which would have to be [fol. 344] taken into consideration in order to have it fully before the Commission and it is not here in issue. I don't see the relevancy of it to the particular issues here.

Mr. Pierson: Well, Mr. McCollester has stated that the service and rates in connection with the movement of the D. L. and W. float bridge and the Seatrain cradle performed by Hoboken Manufacturers is not in issue. By that I mean the divisions are not in issue on that traffic. Now, of course, that clarifies the situation somewhat but I think we are entitled to show what that service is. I think we are entitled to show what Hoboken receives. Now, I don't think that the complainant could just make a brief reference to a service and then shut us off to inquiring to the details. I think we are entitled to know that.

Mr. McCollester: Let me say I didn't mean to imply, and if I did give the impression I want to change it, that if there is freight interchanged with the D. L. and W., that moves over Seatrain, and if it is handled over the new float bridge, the divisions on that freight are involved here, but, as I understand what counsel is asking for, were the terms of the operating contract. That is what it comes down to.

Mr. Pierson: No, no. I asked for a description of the operating service performed by Hoboken between the float bridge and the Seatrain cradle. Now, I am not entirely clear from your last remark, Mr. McCollester, whether [fol. 345] these divisions on that traffic are in issue or not in this proceeding.

Mr. McCollester: Why, yes, I think they are. In other words, this case involves the divisions being received by Hoboken on the one hand and the trunk lines on the other, on all freight interchanged with Seatrain. Now, if it should be that same D. L. and W. Seatrain freight is handled over the float bridge instead of by the Erie interchange, the divisions on that would be involved in here.

Examiner Hoy: I think the cross-examination may proceed. The question is proper.

A. The interchange would be D. L. and W. and the Hoboken-on Seatrain traffic is identical with the interchange of Hoboken and Erie and Erie traffic. In other words, the D. L. and W. has an interchange track starting at Hudson

Street and running parallel to the so-called River Road and D. L. and W. traffic is placed on that interchange track and Hoboken picks up from that interchange track and pushes it to Seatrain vessels. Vice versa traffic from Seatrain vessels are switched to that interchange track and the D. L. and W. only picks up there to take the traffic from that interchange track.

By Mr. Pierson:

Q. Let's first consider a car arriving at the D. L. and W. float bridge destined for southbound movement via Sea-
[fol. 346] train. Does the Hoboken Railroad unload the float, pull the cars off the float?

A. Not as the Hoboken, no. That's D. L. and W. D. L. and W. interchange is to the westerly end of the float bridge yard as I have testified. It is D. L. and W. traffic until it reaches that interchange track approximately at Hudson Street.

Q. What kind of power is used in unloading the floats?

A. The D. L. and W. floats?

Q. Yes.

A. Diesel electric.

Q. And what company owns the Diesel electric motor power?

A. Hoboken serves those floats, agent for D. L. and W.

Q. Is a charge made for that service by Hoboken?

A. That service plus other certain land and facilities which D. L. and W. have contributed to let Hoboken—in fact, give Hoboken exclusive rights to. It is all a matter of agreement. In other words, Hoboken acts as agent to do certain switching operations for D. L. and W. and is compensated by various means.

Q. Is the amount expressed per car? Is there a per car charge?

A. If there is a per car charge there is a per car charge in the contract—yes.

Q. How much is that?

Mr. McCollester: I object, Mr. Examiner.

[fol. 347] The Witness: Wait a minute. I want to say that if you want that you are going to have to get into the property, the use of the float bridge and everything else because it is all a part of one. You can't pick out a piece of it. I am perfectly willing to put the whole contract in the record.

Mr. Pierson: We would like to have that contract in the record.

Mr. McCollester: Are you speaking as counsel for the D. L. and W. now?.

Mr. Pierson: I am speaking as defendant's counsel in this case.

Mr. McCollester: Does that include the D. L. and W.? You can offer it yourself.

Mr. Pierson: Are you willing to furnish that copy for the record?

The Witness: If the D. L. and W. wishes me to I would just as soon.

Mr. McCollester: I think it is immaterial, Mr. Examiner.

The Witness: It isn't our traffic.

Examiner Hoy: What do you expect to prove?

Mr. Pierson: What I expect to prove is the amount per car paid by D. L. and W. to the Hoboken for the service of unloading cars from the float, taking them up to the point of interchange described by the witness.

[fol. 348] Examiner Hoy: Yes. But witness says that won't be the complete picture.

Mr. Pierson: I am willing to have him say what the considerations are; what the amount per car is and what it covers.

Examiner Hoy: I think it probably would be well to have the contract in if somebody will put it in, the service performed and the amount of compensation involved. Suppose you furnish a copy of the contract for the record, Mr. Brush and make any explanation of it that you care to.

Mr. McCollester: Well, Mr. Examiner, why should we have to furnish that contract when it is in the possession of the defendants here. If they want to put it in——

Examiner Hoy: Apparently it isn't.

Mr. McCollester: Well, Mr. Examiner, the D. L. and W. is the defendant and I think that we, as an agent, shouldn't be put in the position of putting into the record a contract in which the D. L. and W., the defendant, is the principal. Now, if the D. L. and W. counsel comes here and offers the contract in evidence I shall object to it as irrelevant but I shall not object to disclosing its contents. I don't want to be put in the position of an agent putting into the record, at the request of some competing railroads, a

contract with the principal when that principal is equally a party to the case and not here.

Mr. Pierson: Well, do you object to stating what the [fol. 349] charge is?

The Witness: I tell you the charge is all involved in the property of the Hoboken Railroad, property which in turn has been turned over to the D. L. and W., a piece of property which the D. L. and W. has in turn turned over to the Hoboken. Your question just can't be answered.

Examiner Hoy: I believe if we brought a copy of the contract in here we would have a lot of explanation with reference to it. You probably would have to go into the values of these lands to find out what the consideration was. I don't see where it is going to help you any.

Mr. Pierson: Well, the complainant, of course, put in the contracts between the Seatrain and Hoboken and, as I understand, counsel for complainants, these divisions on this traffic to and from the D. L. and W. float bridge, are in issue.

Mr. McCollester: Well, if the D. L. and W. thinks that it is material to their case, they have the contract in issue and they can put it in. They are a defendant here, but we, as their agent, are not going to be put in the position of having that contract put in evidence on the cross-examination by counsel for some competing defendant.

Mr. Eshelman: It seems to me that the fact is that we are in a rather odd position to have counsel state that they are in the position of agents with regard to this thing, [fol. 350] or even for the witness to state it. It certainly would be the best evidence as to what the contract itself would define, the capacity of the parties and their relationship. In other words, we are taking here something other than the best evidence as to what is the relationship. It seems to me it is their case now.

Examiner Hoy: Well, at this time, I won't require any copy of that contract; that is, the Examiner will not require any copy of the contract to be submitted by complainant. It may be that later on some different action might be taken but not at this time. It seems to me that you speak for the Delaware and Lackawanna and Western as well as the rest of them here and you should put it in or come here with some reason why your principal will not submit the evidence. I am not sure that it would be of

much pertinency or weight without full explanation to the terms of it.

Proceed.

By Mr. Pierson:

Q. You described the service performed by Hoboken Manufacturers Railroad by switching the traffic from point of interchange in Hudson Street through the classification yard down to the Seatrain cradle. What division does Hoboken Manufacturers Railroad receive on that traffic?

A. Hoboken Manufacturers Railroad is claiming the same division on that as it is claiming from the Erie interchange.

[fol. 351] Q. Well, what is the present division you receive on that traffic, is it 63 or 66 cents per ton?

A. That is what the D. L. and W. is paying, like all the other railroads; the same as they paid when it came through the Erie.

Q. How many cars does the railroad float serving the D. L. and W. 11th Street station hold?

A. 14 or 21.

Q. Is any special loading of the floats required as to the distribution of weight?

Mr. McCollester: Isn't that a matter for the defendant? It is their own operations, not ours.

Mr. Eshelman: He just said he did it.

The Witness: He wants me to testify what I do in connection with these rates which we claim D. L. and W. are too high.

By Mr. Pierson:

Q. The same powers that load or unload the float at the D. L. and W. station are used in the switching and classification service?

A. We have three Diesel electric locomotives, depending upon the traffic conditions. They are alternately used throughout the whole railroad. In other words, locomotive 600 may be used today to serve the D. L. and W. float and tomorrow locomotive 601 may be used to serve the float.

Q. You use the same motor power for servicing the float [fol. 352] as you do for switching and classification service, is that correct?

A. That is correct.

Q. What switching and classification service do you perform on traffic moving northbound and going from the Seatrain cradle to the D. L. and W. float bridge? You describe it in the reverse direction. Now, will you tell me what the northbound move is?

A. As I have described, the cars come off the Seatrain ship one by one, are pushed up into the yard by the gasoline locomotive and there split up, depending on where they are going to go. Such as direct to the Erie interchange, such as direct to team track or to track for inspection or D. L. and W. interchange or to freight station on the L. C. L.

Mr. McCollester: Are the cars for inspection also held in the supporting yard between Hudson and Bloomfield Street?

The Witness: No, not necessarily. That is a question for customs' convenience, depending upon where the customs' staff wishes to do the inspecting, where the proper facilities are.

By Mr. Pierson:

Q. Is it a fair statement to say that the northbound traffic to the D. L. and W. float bridge is substantially the same as the service on the northbound traffic for the Erie interchange?

[fol. 353] A. I don't think they are any different at all. We just happened to have two interchanges, down here being the D. L. and W. and up here the Erie (indicating). Everything is the same in each direction.

A. I take it you would make the same statement with respect to the southbound traffic coming from the D. L. and W. float bridge?

A. That's right.

Q. It is all substantially similar?

A. Yes.

Q. In your Exhibit No. 7 you show an item of $54,729.60 representing fixed charges, rent of road and interest on debt. Now, can you separate that figure between the rent and interest? Do you have that readily available?

Mr. McCollester: That figure you cited, Mr. Pierson, is for the year 1936, is that correct?

Mr. Pierson: That is correct.

A. I don't think I have it with me but I can readily separate it. The rent of leased road and equipment was $29,604.79 and interest on debt was the balance.

Q. Does the amount representing the interest on the debt include the interest on the notes involved in finance docket 9598?

A. That is correct.

Q. Do you know the amount of the notes outstanding at present?

[fol. 354] A. Approximately $300,000.00.

Q. Bearing 6 per cent interest?

A. Yes, and then there is an old open account of about another $100,000.00 on which Hoboken pays interest.

Q. What was that money used for?

A. That money was the amount that Hoboken borrowed to buy the first two Diesel electric locomotives.

Q. Now, the money received from the notes involved in Finance Docket 9598, as I understand it, was used for the purchase and erection of a crane, dredging, rearrangement of tracks, for the purpose of handling Seatrain traffic. Is that correct?

A. Only a part of it. A substantial sum was advanced to the road to keep it going until Seatrain traffic could come on the road to make it break even. For instance, the Hoboken Land and Improvement Company charged no rent, they just took notes for it. They paid the taxes under the lease which Hoboken should have paid under the lease and merely charged Hoboken for it.

Q. Then a portion of the proceeds, as I understand it, were used to pay off back taxes and rentals?

A. No. It was between rentals and taxes, between—well, for the year 1932, that is what it really means.

Q. Can you point out from Exhibit No. 7 for the year 1936 what item includes the 40 cents allowance made by Hoboken pursuant to a contract in evidence as Exhibit [fol. 355] No. 11?

A. Station employees handling.

Q. Now, that item is in the amount of $171,329.71. What proportion of that represents the payment of the 40 cents allowance?

A. Approximately $110,000.00 was represented by the payment of the 40 cents from Hoboken to Seatrain both on trunk line traffic and on Seatrain traffic. That particular

year Seatrain traffic, local traffic, exceeded Trunk Line.

Q. Can you tell me the approximate number of cars on which the allowance was paid, represented by this figure of approximately $110,000.00? Do you have that readily available? You have already supplied me with that figure.

A. I have already supplied you with that detailed breakdown making up the 14,961 cars shown on the exhibit.

Q. In the footnote to the Exhibit No. 7 you refer to cars handled between Seatrain vessels and lighters and I believe your testimony in connection with that subject is at page 100 of the record. Will you state whether or not Seatrain maintains freight stations in New York and Brooklyn for the receipt and delivery of carload and less than carload freight?

A. Yes.

Q. Your steamships do not dock at either New York or Brooklyn, do they?

A. No.

[fol. 356] Q. How is the traffic between your New York and Brooklyn stations and Hoboken handled?

A. By truck.

Q. Is any of it by lighter?

A. No.

Q. Did you lighter the freight at one time?

A. Not to my knowledge.

Q. Are there any lighters operated by or for Seatrain at the present time?

A. As I testified there are two groups—these cars mentioned here must be split in two groups. Traffic to and from Seatrain which was delivered by or delivered to Trunk Line and traffic destined to points in New York Harbor where Seatrain's rate, like all of its competitors, apply to lighterage deliveries within the Harbor or points in the Harbor where free lighterage is performed by Seatrain, the same as it is performed by the Morgan Line or any other line. That freight is lightered to and from Seatrain's berth and there loaded into cars.

Mr. McCollester: So the record may be clear, you began your statement, Mr. Brush, to these cars mentioned here. You mean the cars mentioned on the footnote on Exhibit No. 7?

The Witness: Yes.

By Mr. Pierson:

Q. Well, then, am I to understand that none of the traffic included in the 744 cars and 578 cars referred to in the [fol. 357] note on Exhibit No. 7 came from the New York and Brooklyn stations of Seatrain?

A. They did not. We do not lighter that traffic, we truck it, as I testified.

Q. Will you look at the map, Exhibit No. 1, and describe the point at which the lighters dock?

A. The end of the trestle. That is, the northerly outside end of the trestle. Occasionally we put lighters along the northerly side of Pier 16.

Q. The lighters are tied up, then, at the north end of the Seatrain's berth under the word "Weehawken"?

A. That's right.

Q. Do you ever—strike that question.

Are the lighters ever docked in the Seatrain's berth when the Seatrain's vessels are not in port?

A. Yes. In many cases they fill the whole berth, if necessary.

Q. Who unloads the lighters on southbound traffic?

A. Seatrain. Wait a minute. You said unloads the lighters?

Q. Yes.

A. On which class of freight, Trunk Line freight or Seatrain freight?

Q. Seatrain freight.

A. Seatrain?

Q. Do they do it with their own forces or under contract with a stevedoring company?

[fol. 358] A. Through a stevedoring company. Seatrain has no forces. They have a regular gang supplied by a stevedoring contractor.

Q. On lighterage traffic destined southbound by Seatrain, is it necessary that an empty car be placed adjoining the lighter?

A. That's right.

Q. Where is that empty car obtained?

A. From the so-called hold yard. I have testified that, for instance, a southern car may come north and be destined to some point on the Erie. Under the car service rules, the Erie may return that car empty to Hoboken and Hoboken in turn returns it to Seatrain.

Q. Can you specify a little more particularly on what tracks these empty cars are stored?

A. They are likely to be stored on any track throughout the yard.

Q. West of Bloomfield Street?

A. Not necessarily, but presumably.

Q. Would they start in the Seatrain yard between Bloomfield and Hudson Street?

A. They may. That is a matter of local convenience as to where they are going to hold those cars. They may have a call for that car to load local traffic on its line, anywhere on its line, including to return it to Seatrain.

[fol. 359] Seatrain may insist that the car be returned empty under the car service rules and when they do they load that car with lighterage freight.

Q. Does Hoboken switch the empty car from wherever it may be located to the point where the lighter is docked?

A. That's right.

Q. Then after the car is loaded from the lighter, why the stevedoring company at the expense of Seatrain—Hoboken moves the loaded cars to what point?

A. Back to the cradle.

Q. It never moves the loaded car up into the Seatrain yard?

A. Occasionally it might.

Q. Well, do these——

A. (Continuing) For example, if lighters came in ahead of time, in order to relieve the extra tracks on that trestle, which incidentally Hoboken uses for loading cars for the piers 14, 15 and 16, Hoboken may prefer to pull that car up and leave it in the yard.

Q. So these lighters dock practically every day?

A. No, lighterage freight is handled primarily on the day that the ship arrives and sails.

Q. In other words, substantially all of this southbound lighterage traffic by Seatrain would come in on lighters on Wednesday morning?

A. On Tuesday.

[fol. 360] Q. And then the operation would be that Hoboken would spot an empty car and that would be loaded and then the loaded car would be moved from the lighter to the cradle?

A. That's right. In other words, Hoboken, theoretically, returns the empty car to Seatrain's trestle, Seatrain says,

"Listen, for $2.50 please kick it a couple of hundred feet down the line and when it is loaded kick it back again." That is what that arrangement amounts to.

Q. Now, on traffic moving northbound and unloaded by Seatrain at the cradle, does Hoboken Manufacturers Railroad take that loaded car and place it adjacent to the lighter?

A. Yes.

Q. And when the car is made empty, what does Hoboken Manufacturers Railroad do, take the empty car, does it, to some place in the yard?

A. That's correct. It will hold that empty car in that yard for a local loading or return it to Seatrain and it is held at Seatrain's expense, per diem expense.

Q. In connection with the direction of the movement the lighter is loaded or unloaded at the expense of Seatrain?

A. Yes, on Seatrain's local freight, but on your freight you unload the lighter and Seatrain loads the cars.

What type of motor power does Hoboken use in performing this empty and loaded car movement to and from the ligh-er?

A. Gasoline locomotive.

[fol. 361] Q. How many cars are ordinarily handled at one time in the service you have just described? Is one car at a time handled?

A. No. At the end of the trestle, when the ship is in, there are berths for two, possibly three lighters. You got a double track down there and depending on what the commodity is, how many lighters the operations are arranged to liandle them in the most economic way.

Q. Let's assume that lighterage freight arrives for your southbound movement via Seatrain a few days after the sailing of the Seatrain vessel. Where would be loaded a car being held pending the arrival of the steamship?

A. Well, as I have said, it would be held theoretically on the trestle unless it interferes. If it interferes with Hoboken's operations, it would move it to the so-called hold yard. That is provided in the contract which we put in evidence here, that Hoboken has the right to use those tracks and that trestle. In return, Hoboken provides the land necessary to hold the cars that would be left on the trestle.

Q. Does the $2.50 charge cover all of the service you have described? Including the movement of the empty and the loaded cars?

A. The $2.50 charge is solely to cover Hoboken's expense of its gasoline locomotive; those movements by that locomotive. There is no ownership—I mean there is no expense for tracks or land or trestle, or anything like that. It is solely locomotive expense on that gasoline locomotive to [fol. 362] move those cars. Seatrain pays full rental for the berth and the trestle including the tracks thereon.

Q. Well, the $2.50 payment made to Hoboken is on a per car basis, is it not?

A. That is correct.

Q. Now, is that on a loaded car basis?

A. That is right. On a loaded car basis.

Q. Hoboken then receives no compensation for the movement of the empty cars, does it?

A. That's right, if they have it to handle; sometimes they don't.

Q. You stated that the costs had been figured at $2.50 a car. As I read your testimony at page 100, approximately when was that figure arrived at and made effective?

A. It was arrived at in January, 1937, made effective March 1, 1937.

Q. Were there any conferences or negotiations between the Hoboken and Seatrain leading up to the establishment of that particular figure?

A. Yes.

Q. What were they?

A. We spent several months revising our contracts at that time which we have placed in the record as exhibits. We checked various costs and found that the old charge of 40 [fol. 363] cents a ton on this lighterage which the Seatrain had been paying for five years was entirely out of line with the cost of doing that small switching by that gasoline locomotive.

Q. Did you have a cost study made to ascertain whether the $2.50 figure was proper?

A. What do you mean by a cost study? We know how much it costs to run the locomotive.

Q. Did you ever study the operation over any period of time in ascertaining——

A. We know exactly what it costs to run that locomotive per month, per year, per day, per hour.

Q. Did you make any studies to find out how many engine hours, for example, were devoted by Hoboken to this service?

A. Certainly not.

Q. That would be one of the factors of cost, would it not?

A. Not at all. You would spend more time figuring that thing out than you would to run the locomotive. You have a matter of pushing a car several hundred feet and——

Q. You made no detailed study of any particular period on any particular traffic for the cost of full cars or anything of that nature?

A. As I have testified before, we didn't need to make any cost study.

Q. What does it cost per hour for this particular service? [fol. 364] A. I don't remember. I can tell you if I go back to the records to find out how much it costs per hour to run that locomotive.

Q. Did you ever keep a record of how much time was spent in handling this particular traffic for which the $2.50 charge applies?

A. Not as you refer to it, no. That's a question like asking me how long does it take to walk from your front door down to your sidewalk, did you ever keep track of that?

Q. Is the $2.50 charge published in any tariff that you know of?

A. No, it is not a tariff charge, it is a service which Hoboken performs as agent for Seatrain. Seatrain can just as well turn around and lease the locomotive for five minutes to push a car and pay it a rent per five minutes and then let it go for a few hours if they had another car and rent it for five minutes again. I think it should be obvious that $2.50 a car was plenty. Speaking for Seatrain, we wouldn't pay any more.

Q. Just one final question on that phase of the matter. Is it a fact that Hoboken is performing the service at the rate of $2.50 per loaded car, uses the Hoboken's facilities Hoboken's yard facilities along Park Avenue and easterly thereof down to and including the portion along the Seatrain berth?

[fol. 365] A. No. If I understand you correctly—your question correctly, no.

Q. Didn't you say that?

A. I said occasionally when either because of congestion or rush of traffic or because a car of the lighterage came in ahead of time it was advantageous for Hoboken to pull that car that had been loaded from a lighter out into its

yard and hold it there rather than to hold it on Seatrain's property which Seatrain rents from Hoboken and in those cases Hoboken's yard and facilities are used and they might put the car out there, if they wanted to.

Q. Hoboken would go wherever it might be necessary to obtain the empty equipment?

A. Oh, yes. Now, for the empty, under the Car Service Rule, Seatrain—Hoboken must return that empty car to Seatrain. Is that right?

Q. Are you asking me?

A. Yes. In think you are all mixed up.

Q. No, I am just asking.

A. Okay, Seatrain says "Return the empty to me", and Hoboken brings it down to the cradle and then has nothing to do with lighterage.

Q. I am just asking you one simple question.

A. (Continuing) And then Seatrain says to Hoboken, "All right, now I want you to kick that car for me". Seatrain has nothing to do with it up to now. Now, there-
[fol. 366] fore, your question, "Does Hoboken, for Seatrain lighterage, move the car down to its yard?", my answer is, no, it does not.

Mr. McCollester: May I just interject and clear up the record at one little point there? I don't want to interrupt your cross examination, but Mr. Brush, in telling why a car was sometimes moved from the trestle up into the yard, I think your answer might be construed as implying that Hoboken preferred to hold it in the yard than for Hoboken to hold it on the pier. When the car is on the pier, it is not in Hoboken's possession, it is in Seatrain's possession.

The Witness: It is in Seatrain's possession but on the other hand it may be very well for Hoboken to move it because under the same contract Hoboken is given the right to use those tracks to serve these three piers so it may have to move the car for its own account.

Mr. McCollester: Isn't it a fact that the holding of the car by Seatrain on the trestle may interfere with Hoboken's operations, so Hoboken gets it out of the way by bringing it up in the yard?

The Witness: That's correct.

Mr. Pierson: I didn't want to get into any debate with the witness about this matter. All I was trying to bring out was that it might be necessary, and was at times, for

[fol. 367] Hoboken to go up into the yard, along Park Avenue, or easterly, or some other place, to get an empty car.

The Witness: For what purpose?

By Mr. Pierson:

Q. For the purpose of unloading the freight from the lighter and placing it into an empty car?

A. Never.

Q. Well, where are those empty cars obtained?

A. The empty cars are interchanged at the cradle and it is Hoboken's obligation to return them to the cradle. So, therefore, it is never Hoboken's—it is never necessary for Hoboken to run up here to get an empty car for Seatrain lighterage. All Hoboken has to do is to put it into the cradle.

Q. Well, Hoboken must necessarily get the empty car from some place on its line?

A. That's right. It is being compensated by the load that all railroads might return the empties under the car service rules. Don't let's get Seatrain lighterage freight as part of the return of the empty because it is not?

Q. I am trying to find out where Hoboken gets the empty cars in order to place them at the lighter. That's all I am asking about.

A. Anywhere there may be an empty car on its lines which it is obliged to return to Seatrain and complete its obligation on the loaded movement and it returns it back to Seatrain and then Seatrain takes the empty car and begins its lighterage service from that point, not back in the [fol. 368] yard where it got the empty.

Q. Now, on page 105 of the record, you refer to a report made by a railroad operating sub-committee and I believe the date was the latter part of 1933.

A. I don't recall the date.

Q. Was that report in writing?

A. The part of *the* it that I saw was in writing.

Q. Am I correct in my recollection that you said you had been furnished with a copy of that operating committee's report?

A. Furnished a part of it.

Q. Do you have any reason to believe that you were not furnished with the complete report?

A. Yes.

Q. This operating sub-committee made a report and I want to ask you where they got the figures as to operating expenses, taxes and rent? Did you furnish those figures to them?

A. We opened our books to them.

Q. Did they examine the books or did you furnish them with the figures?

A. They examined the books. We opened the doors to them.

Q. When you refer to books, I take it——

A. All our records.

Q. You are referring to the Hoboken's records and not Seatrain's records?

[fol. 369] A. Oh, yes. This had nothing to do with Seatrain.

Q. Your exhibit No. 8 shows certain lighterage costs which I think you said you obtained from the report made from the railroad operating sub-committee?

A. That's correct.

Q. Now, will you look at that exhibit and state whether or not those lighterage figures also include the cost of switching?

A. You mean at the rail terminal?

Q. Take, for example, a car from Croxton, in Jersey, to the Erie, moving ultimately via lighter to a point in Hoboken. Do you know whether or not the figures include the cost of the move from Croxton to the float?

A. I hope they don't.

Q. Did you examine the heading of the exhibit from which you took this information?

A. I did, with a great deal of interest.

Q. Did you see any reference to yard costs in the heading?

A. That's correct.

Q. Did you find any figure in the exhibit, that is specific amounts, covering yard costs or switching service?

A. Yes, I found that some railroads did it for 10 per cent of what other railroads did it. When I asked the Erie how come their yard costs were so high, they lost their records [fol. 370] or something. Incidentally, the yard costs were

not from Croxton, they were the cost of breaking up the cars to move the car from the yard at the waterfront down to the lighter berth and they varied from about 50 cents a car up to $6.00 and some odd cents.

Q. Is that information you have just given us shown in the report of the Operating Committee or is that something you have obtained from other sources?

A. I am testifying to this report which they made; what they told me. The persons I asked about it.

Q. It is not shown in the report itself, is it?

A. It is a part of it, yes. You have got the report. You can look at it yourself.

Q. Let me ask you one general question. Does the figure of $1.63 per ton, shown in exhibit 8, to the Erie Railroad include any amount for switching?

A. Yes. Your yard switching. Not from Croxton though; so I was told. Solely yard switching.

Q. One more question about exhibit 8. You show a total of 3,595 cars. Did any of those cars move via Seatrain?

A. It is possible that some of Seatrain's lighterage freight interchanged with the Trunk Line. It might have been included in that figure but I doubt it because that was about 1933 and up to that time there has been no—we forced you fellows to take some freight lighterage just to make a point [fol. 371] but up to that time there had been little or no interchange between Seatrain and the Trunk Lines by lighter, and I think we can take it as not including Seatrain.

Examiner Hoy: We will adjourn until two o'clock.

(Whereupon an adjournment was taken until 2:00 o'clock P. M.)

Afternoon Session

Examiner Hoy: All right, we will resume, gentlemen.

Mr. Pierson: If there is no objection on the part of the Examiner and Mr. McCollester, the defendants would like to interrupt the cross examination of Mr. Brush at this time and present as a witness Mr. Fletcher, who will introduce a map exhibit and a two-page mimeographed statement relating to land values which I think will be helpful in the further cross examination of Mr. Brush. May I ask your indulgence in that respect?

Mr. McCollester: I have no objection.
Examiner Hoy: You may call your witness.

(Witness Brush temporarily excused.)

Mr. Pierson: I call Mr. J. L. Fletcher.

J. L. FLETCHER was sworn and testified as follows:

Direct Examination.

By Mr. Pierson:

Q. Will you please state your name, place of residence and occupation?

[fol. 372] A. J. L. Fletcher, my residence is Cleveland, Ohio. I am supervising land appraising in the Land and Tax Department of the Erie Railroad, now operated by C. E. Denney and John A. Hedden as trustees.

Q. About how many years in the aggregate have you been engaged in handling real estate matters?

A. 22 years.

Q. During any of that period of 22 years were you engaged in handling valuation matters for the Erie, or any other railroad in connection with the Interstate Commerce Commission's land appraisals made pursuant to section 19-A of the Interstate Commerce Act?

A. Prior to 1920 I was employed by several western carriers in land appraisal work, directly in conjunction with similar work being conducted by the Commission to which you referred. Subsequent to 1920 I had been engaged on behalf of the Erie Railroad Company a great deal of the time in the same capacity.

Q. In the performance of the valuation duties you have described, did you become familiar with the valuation maps on file with the Bureau of valuations, Interstate Commerce Commission, and classifications of property made by the Bureau of Valuations and their method and manner of marking up valuation maps?

A. Yes, I have. Through frequent and extended conferences with the representatives of the Commission's Bureau [fol. 373] of Valuations and their land section, their appraiser, attorneys, and so forth, I have become familiar with all of their methods of marking their maps with rela-

tion to their classification, their zoning or value and the land of carriers.

Q. Are you also familiar with their records showing units of value and zone values?

A. Yes. Yes, I have examined those frequently in connection with these conferences that I have just mentioned and for other purposes.

Q. Have you had prepared at my request a photostatic reproduction of complainant's exhibit No. 1 in this proceeding?

A. I have.

Mr. Pierson: I ask, Mr. Examiner, that the map referred to by the witness be marked for identification as exhibit No. 29.

(Exhibit 29, Witness Fletcher, marked for identification).

By Mr. Pierson:

Q. Will you please explain the colors and various markings you have placed on exhibit 29 and the source of your information?

A. On Thursday, October 6th, last past, I took the blueprint, exhibit No. 1 referred to, into the offices of the Bureau of Valuations in Washington.

Q. Whose office in particular?

A. Mr. A. B. Manley, head land appraiser in the land Section.

[fol. 374] Q. What did you do at that time?

A. Secured the copy of a similar map which the Field Appraiser used in making an appraisal of the land owned or used by the Hoboken Manufacturers Railroad. After a comparison of the two maps, I placed upon this blueprint copy of exhibit No. 1, in colors, the same things that the Bureau's appraiser has put on there so far as it is possible to exactly duplicate them.

Q. This inspection of the Bureau's records you have referred to, was that permitted under authorization of Director Lewis of the Bureau of Valuation?

A. Yes. Mr. Manley had secured such authorization from Mr. Lewis. In addition to the colors which the Bureau's appraiser had placed on this map, you will notice on the upper left hand corner of the map there is a mimeographed schedule attached to their reproduction showing

the character of title through which the Hoboken Manufacturers Railroad Company holds and uses properties which are included in this map. This schedule, you will note, was prepared by the New York field office of the Bureau of Valuation. It shows the parcel numbers they have assigned to each of the various areas which are covered by the instruments shown in that schedule.

Q. For example, parcel No. 6 is shown as located on the Park Avenue side, immediately north of 14th Street.

A. That is correct.

[fol. 375] Q. And parcel No. 11 to the west of Park Avenue?

A. That is correct. The same numbers as shown on the Bureau's copy of the map have been shown on this reproduction in ink.

Q. Will you tell us now what the orange, red and yellow colors indicate? You might start with the yellow color first.

A. The solid yellow is applied to the lands owned in fee by the Hoboken Manufacturers Company as determined by the Bureau of Valuation in this appraisal which it has made. The solid orange color represents the lands in Hoboken Manufacturers Railroad Company leases from Hoboken Railroad warehouse and steamship connecting company.

Q. And according to the schedule that is under a 99 year lease, dated in June of 1906?

A. That's correct. The solid red color represents the lands leased by Hoboken Manufacturers Railroad Company from Hoboken Land and Improvement Company.

Q. Now, what do these yellow lines mean?

A. The yellow lines that have been drawn across the properties at various points represent the zone limit between which the appraiser for the Commission in each instance found lands of like value.

Examiner Hoy: What do you refer to by "yellow lines"? Just off the record.

(Discussion off the record).

[fol. 376] The Witness: On the photostatic reproduction of this map, the lines shown as yellow on the original blue print have turned out to be more of a greenish yellow, designating the various zones referred to.

By Mr. Pierson:

Q. And what do the figures within the circles indicate?

A. Those are the numbers of the various zones assigned to them by the Commission's appraiser.

Q. And they run from one to eight, 1 to 8-N, inclusive, including 8-NC.

Mr. Pierson: I offer exhibit No. 29 in evidence.

Mr. McCollester: May I ask counsel just what the purpose is of the exhibit and what it is designed to prove thereby? I have no objection to the exhibit as indicating the nature of the title of the real estate of the Hoboken Manufacturers Railroad Company except it is subject to check and modification to the extent that it isn't correct.

Mr. Pierson: Mr. Brush on direct examination stated that the property used by Hoboken Manufacturers Railroad was held under a 99 year lease with the Hoboken Railroad Warehouse and Steamship Connecting Company and under another 99-year lease from Hoboken Land and Improvement Company and that in addition certain lands were owned in fee by Hoboken Manufacturers Railroad. Now, I take it that it will be permissible for me on cross-examination to [fol. 377] ask Mr. Brush to delineate on exhibit No. 1 the location of the various areas held under lease and those owned in fee. Now, the only purpose of this exhibit is for the information of the Commission and the parties as to the location of the various interests.

Mr. McCollester: For that purpose I have no objection to it. I would object if any point were to be made—the description of the abut-ing properties on here or the action of the appraiser of the Bureau of Valuation in valuing abut-ing properties and what he valued and so forth. I would object to that, but simply for the purpose of showing the lands owned in fee and the lands leased from different lessors I have no objection to it being taken subject to check, of course, to the extent that the situation may be changed now or it may be incorrect.

Mr. Pierson: We make no special points of these notations such as four and five story apartments. As I understand it, it is merely the purpose of this witness to make as complete and accurate a reproduction of the Commission's map as was humanly possible for him to do without leaving anything off.

Examiner Hoy: But the purpose of the exhibit is to describe in varying colors the different titles to the property that the Hoboken operates.

Mr. Pierson: Exactly so.

Examiner Hoy: It will be received for that purpose as [fol. 378] exhibit No. 29.

(Exhibit 29, Witness Fletcher, received in evidence).

By Mr. Pierson:

Q. While you were in Washington on October 6th, did you make a true and accurate copy of the words and figures contained in the land report of the Bureau of Valuation of the Interstate Commerce Commission as of December 31, 1933?

A. I did.

Q. Is that contained in a two-page mimeographed exhibit?

A. It is.

Mr. Pierson: May I ask that that be marked for identification as exhibit No. 30?

(Exhibit #30, Witness Fletcher, marked for identification).

Mr. McCollester: This is in the Commission's final report?

Mr. Pierson: I might state, Mr. McCollester, that later on, through another witness, we will offer in evidence a copy of the Commission's final valuation of the property of the Hoboken Manufacturers Railroad as of December 31, 1933. That final report shows the total value found by the Commission as of that date for the various classifications of the property. Exhibit No. 30 is merely the detail or segregation of the values which go to make up the total shown in the final valuation report.

[fol. 379] Mr. McCollester: The total is the total of the figures on this exhibit here?

Mr. Pierson: When we put in the final valuation report I will then connect up the total figures shown in exhibit 30 with the final valuation report.

By Mr. Pierson:

Q. Is this exhibit self-explanatory, Mr. Fletcher?

A. Yes, I think it is.

Q. In order to check this up later on with the finance valuation report which we expect to offer, will you state the total value for the class 1, class 2-2 and class 2-1, bands?

A. The total appraised value of those three classifications is $1,133,184.00.

Q. One further question. In the Ex Parte 123 proceeding before the Commission, what land value did the Commission use for the Hoboken Manufacturers Railroad Company as of December 31, 1936?

A. The same sum that I have just named.

Q. That's all.

Mr. Pierson: I offer in evidence exhibit No. 30.

Examiner Hoy: If there is no objection, it will be received.

Mr. McCollester: I don't know as I understand it.

[fol. 380] (Exhibit #30, Witness Fletcher, received in evidence.)

Mr. McCollester: I don't know as I understand that last question. Where, in 123, did the Commission use such a figure?

The Witness: The Commission in Ex Parte 123 valuation, which it offered on motion in that proceeding, grouped the various carriers as to class 1, class 2 and the various switching lines, so-called, into various groups. Within those groups they included the value separately in their office records for each one of the companies in the same manner as they would normally publish that information on that individual carrier.

The sum of those in the group in which the Hoboken Manufacturers Railroad was shown included, which I have just named, the valuation for the land which I have just used for the Hoboken Manufacturers Railroad Company.

Cross-examination.

By Mr. McCollester:

Q. Mr. Fletcher, so far as the Erie Railroad is concerned, the Commission has—has the Commission valued its property in the New York Terminal area?

A. They have been working on that for some time. I understand they have not completed their values. I have been in touch with them frequently, not only in the offices

in Washington but their local appraiser here who had this matter in this particular section in charge and even as late [fol. 381] as this morning I have discussed it with one of his associates here and they have not yet completed the appraisal of Erie property in this section. I mean by the Erie, the line which the Erie operate or control throughout New Jersey and in New York City.

Q. Well, now, as to the extent that they have made an appraisal and you have been informed of it, how does that compare with your own appraisal or claimed value for Erie Railroad property?

A. In recent years, we have made no appraisals on our own behalf or made any claims as to the present value of our lands in this section except a parcel or smaller area here and there for some particular purpose such as a lease or proposed sale or some transaction of that kind, except as to the tax litigation in which our company and all others in New Jersey except the Pennsylvania are now engaged and as to that those claims were in that proceeding I have no knowledge. They were made for all the railroads by a man employed for that particular purpose by the roads as a group.

Q. Well, now, you said in recent years the Erie has made no appraisal or claim. Have you made such an appraisal or claim in prior years with respect to real estate values in the New York terminal region?

A. Only one such complete appraisal and that was for the value as of June 30, 1918, nothing since.

[fol. 382] Q. What is the valuation date that the I. C. C. appraisal is used?

A. In the primary valuing upon the Erie was June 30, 1918.

Q. How did your appraisal compare with the I. C. C. as of that date?

A. After numerous conferences with the representative of the Bureau we finally stipulated upon an agreed value for every zone upon the entire Erie system.

Q. Before those conferences and before you stipulated, how did your appraisal compare with theirs?

A. In some zones we were higher than they were and in other zones, in the same locality, we were below them.

Q. Generally, in the New York area, you were higher than the I. C. C., weren't you?

A. No, I wouldn't say so.

Q. Wasn't that true of most of the railroads in the New York terminal area, that they have been higher than the I. C. C.?

A. I couldn't say as to that.

Q. That's all.

Examiner Hoy: Any further questions, Mr. McCollester?

Mr. McCollester: No more questions.

(Witness excused.)

Mr. Pierson: Mr. Examiner, we are now ready to resume the cross examination of Mr. Brush.

Examiner Hoy: All right, Mr. Brush, will you please [fol. 383] take the stand?

GRAHAM M. BRUSH was recalled, and having been previously sworn, testified further as follows:

Cross-examination (Continued).

By Mr. Pierson:

Q. At pages 127 and 128 and 140 of the record, in giving us the early history of your conferences and negotiations with the Trunk Lines, you made a statement to the effect that the benefit of Seatrain's invention and method of their interchange should be divided 50-50 between the waterline and the railroad. Do you recall that general statement?

A. Yes, I do.

Q. Now, if the railroads were to pay Hoboken $1.35 a ton on lighterage free freight handled in connection with Seatrain and the same amount, on freight delivered to Pan American Steamship Company, where is the saving to the railroad? There isn't any.

A. If you recall my testimony that on our theory of saving, that 50-50, the railroads do just the opposite of what they have done.

Q. There was to be some element of cooperation within the subsequent development?

A. I certainly think so. Otherwise, it would obviously be throwing money out the window.

[fol. 384] Q. I take it that at the present time your opinion is that the railroads are not entitled to any of the benefits?

A. They are certainly not when they got out and worked for the other water lines and trunk service versus rail and Seatrain, they are not entitled——

Q. Who is entitled?

A. The inventor or the licensee.

Q. In this particular case being Seatrain?

A. That's correct. I can see no reason why Seatrain should acquire property and include patents and pay for those and turn around and give it to somebody who is doing their best to stop the train from using it even at their own disadvantage.

Q. Who owns Seatrain patents?

A. Seatrain has the exclusive license.

Q. You pay royalties, do you?

A. That's correct.

Q. Are they substantial in amount?

A. They are.

Q. Do you have any objection to stating what they are?

A. Well, they exceed the amount of money that is in dispute in this year here, last year.

Q. Would you have any objection to telling me the amount?

A. No, it was in excess of $50,000.00 that Seatrain paid for royalties last year.

[fol. 385] Q. When do the patents expire, do you know?

A. Another six or seven years.

Q. Did I understand you correctly when you last testified that the elevator cranes could not be used except by a licensee of the patent?

A. No. We tried to make that perfectly clear.

Q. I am confused about that.

A. Let me see if I can say it again. Let's assume that all Seatrain ships should sink tomorrow.

Q. Fine.

A. Okay. That is the point of the whole thing. I am glad you admit it, fine. Then the Erie would lose a devil of a lot of business and they wouldn't get it back, too. That's fine, too. If they should all sink and the crane still stands over in Hoboken, that crane, of course, can be used for all sorts of purposes including handling all sorts of cars, for example, picking up a car and putting it on the car float, and that is

not involved in any way with the Seatrain patents. The Seatrain patent is a combination patent. Before you run into that patent you would have to pick up a car and put it inside of a ship or inside of a ship structure and the ship would have to be equipped to take the car. In other words, the patent is a ship's equipment to load cars on its various decks by various means so that cars may be received from [fol. 386] railroad tracks on the dock or from another ship and transferred to the ship's equipment.

Q. What you just said, I suppose is equally applicable at Havana and Belle Chasse?

A. That is correct. The crane itself is not patented. It is the use of the crane in connection with the ship.

Q. Now, when did Seatrain acquire the capital stock of Hoboken Manufacturers Railroad Company? The approximate date.

A. April, 1932.

Q. I believe you said that was purchased at auction following foreclosure proceedings?

A. That is correct.

Q. Or bankruptcy proceedings?

A. Court auction—public auction.

Mr. McCollester: It was sold by the trustees.

By Mr. Pierson:

Q. How many shares of common stock are outstanding?

A. 4,000.

Q. How many shares does Seatrain own?

A. 4,000 less five, I believe. The directors' qualifying shares.

Q. How much did Seatrain pay for the capital stock?

A. Seatrain paid for the properties which it bought, consolidated into one corporation, namely, the Hoboken Manufacturers Railroad, $300,000.00.

[fol. 387] Q. On page 153 of the record you stated that part of the consideration for the payment of the 40 cent allowances by Hoboken Manufacturers Railroad Company to Seatrain was the use of Seatrain's patented device. Can you tell me how much of the 40 cents is represented by that factor or element?

A. There has never been any attempt at division. I think the patent of the device is entitled to the whole 40 cents

if you want to consider it as such. If you recall, the Seatrain was doing a part of Hoboken's operations and that 40 cents was to cover actual switching operations of the gasoline locomotive as well as the obligations to load or unload any cars, and royalties.

Q. Does the United Railways at Havana or the New Orleans and Lower Coast Railroad Company pay anything to Seatrain on account of its patent rights?

A. I have already testified that the rates in Cuba are all according to non-lighterage free rates here so that question doesn't arise. Therefore, it doesn't arise at all in Cuba. As far as the New Orleans and Lower Coast is concerned, I think the answer would be yes, but it isn't in cents per ton or dollars per car. New Orleans and Lower Coast have made a contribution with their railroad facilities toward this enterprise which, in our opinion, offsets what we are asking railroads to pay Seatrain up here for its investment [fol. 388] in properties and in this patent.

Q. But no amount was paid by either the railroads I have named in a comparable amount paid by Hoboken to Seatrain?

A. Yes, I think that the answer is yes that they have. In other words, take for example——

Q. Did you have similar contracts with them such as the one covered by exhibit No. 11?

A. No. As a matter of fact, the contract with the New Orleans and Lower Coast only applies to foreign business and we could, if it were proper, insist that this same contract be made applicable on the lower coast with respect to the domestic business, but we would not do that because, as I have testified, the New Orleans and Lower Coast, by various means, are contributing as much or more than we are asking Trunk Line carriers to contribute up here.

Q. Would you elaborate a little bit more as to the means?

A. Yes. The New Orleans and Lower Coast—let's assume that we should cancel the contract with the Lower Coast tomorrow, or they should cancel it or something should happen so that it is out the window and we couldn't get a terminal at Belle Chasse or in that vicinity. That means that Seatrain ships have got to go up the river. Now, as we have shown in the through route, through rate case, the charges for the Lower Coast coming on down are on the average slightly less than the charges of the public belt

[fol. 389] and the steamship lines for this loading and unloading at City Front. Now, if we should attempt to go to City Front to enable us to get this sort of a contract, which we would insist upon, we would immediately be—our expenses would immediately be increased to offset the payments under this contract. Now, that is one way of looking at it. Another way of looking at it is the Lower Coast—let me put it this way: Let's assume that we should run a Seatrain ship into a port where there were no lighterage free rates or rates—loaded or unloaded, rates at shipside. Would Seatrain's patent or investment in its ship or the terminal have value under those circumstances to the railroad? Obviously, no. Well, then, that charge couldn't be made. Now, where it has that, as we have stated, it should be determined like all other things of value, how could you do it in some other way, for you have something now. You will immediately say, "What is the bother?" True, you may have to invest money. You may have to get a license for the patents. When you get it all through, you can do something and you can compare it and find out what it is worth with how anybody else can do it, and that is what we have done in Hoboken, and we have determined about 73 cents on lighterage free traffic is as cheap as anybody else can do the same thing.

Q. I get your viewpoint of the situation at Belle Chasse, [fol. 390] but what do the railways contribute?

A. They contribute nothing because they are all, as I have said, but apparently haven't made clear to you, that rates in Cuba are non-lighterage free rates, they don't have to unload the cars. It is an entirely different situation than you had either here or at New Orleans.

Q. I think I understand it now. We were talking this morning about the railroad operating sub-committee, and written reports they made back in the latter part of 1935. Did that operating committee in 1935 ask for permission to examine your records and go on your property for the purpose of making a detailed time cross study of the switching operation conducted in connection with Seatrain traffic?

A. The Chairman of that committee made that request to me.

Q. Who was the chairman?

A. Mr. Dinan, vice president of the New York Central. He made it after he and Mr. Bordwell of the Erie had agreed that $1.00 a ton was a reasonable allowance and he

said—he called me into his office and said that the Pennsylvania Railroad was not agreeable to that, and that they wanted to make another cost study. I asked him why they wanted to make another cost study in view of the fact that they had had a man over there for a considerable time and he said he didn't know why they wanted to make another cost study. I asked him if he was satisfied still that [fol. 391] the $1.00 a ton was reasonable and he said he was but he wasn't going to stick his neck out if the Pennsylvania Railroad was going to object to his recommendation, which he thought they would. I then told him that under those circumstances they could find some other means of settling the matter and they needn't go back to Hoboken and make another cost study. Dinan said to me, "If you don't let us go back to Hoboken and let us make another cost study, I will have to report that you refused."

I told him I would tell the president and he has not made that report.

If you would like me to testify what happened in the first one, I will be perfectly glad to testify to that, but I would suggest you lay off it because you are filling the record full of dirt.

Q. In their cost study that the lines wished to make in 1935 and which you declined to permit the railroads to do, you have stated was inclined to be a detailed cost study of the engine hour operations, was it not?

A. Well, that's what Mr. Dinan said that the Pennsylvania wanted but, of course, if you will look at some of the exhibits that we have put in, you will find that if you made such a cost study and you took all of the costs in connection with locomotive hours, you will find that out of 250,000-odd dollars a year of switching costs, switching [fol. 392] operations other than handling, that your locomotives only amount to $30,000.00. It seemed rather ridiculous to make a time study where, if you had varied your figures a hundred percent it wouldn't change the cost of switching, but a very small fraction. In other words, the errors that you would normally make by trying to take something for a week or two, would be far greater.

Q. You think then that making a cost study would be futile.

A. Making a cost study of a locomotive on a railroad whose approximately 90 per cent of the switching had

nothing to do with it, and try to determine the cost on that basis, to me it was ridiculous and still is. It doesn't make very much difference what you want to put in, what your conclusions in the report will be, you will not change your cost to any material extent because you have still got the other 90 per cent which you have got to come on and add on the total.

Q. I take it from what you say that your attitude about making a time cost study of the switching operations in connection with Seatrain traffic is the same as it was in 1935?

A. A connection with any traffic on the Hoboken. You just didn't get anywhere.

Q. Would you be willing to have the Trunk Lines make a time cost study?

A. No. After considering the matter since the last hear- [fol. 393] ing I have looked into the figures to see what good would be accomplished and I find no good could be accomplished and quite the opposite, I think it would mean more dillydallying on the part of the railroads. You can put in most any costs you want to and we would accept them and it still doesn't change the figures, so why fuss around with that sort of a thing.

Q. You have stated on page 96 of the record that the Hoboken Manufacturers Railroad have not been able to break down the switching costs as between the various classes of service. You made the further statement that all services, referring to switching services, are so alike as to be identical. Now, did you make any effort to ascertain what the switching costs were for any particular class of traffic, based upon engine hour costs? In other words, did you ever give your yard conductors reports to fill out showing the amount of time consumed in the various classes of switching services and have that done under the supervision of your yard master or superintendent? Have you ever done that?

A. I wouldn't think of doing it. That is like trying to take an average and taking it out to ninth place and asking what the ninth place is. As I testified before and as the figures in the exhibits show, and your own report shows, that approximately 90 per cent of the cost of switching has got nothing to do with your engine hours. Your own report [fol. 394] shows that. You took those and alleged those

per car right straight down through. I can't imagine how you could do it any other way.

Q. This Operating committee report which was made in the latter part of 1933, was not based upon any time study?

A. Quite right.

Q. It was based upon figures which you furnished or which were obtained from your records as to certain costs set up on the books?

A. 90 per cent of them were taken right off the books. You would get the same figures for the 90 per cent and you start out and you ask yourself how are you going to divide taxes between team tracks and Seatrain and L. C. L. and industries and D. L. and W. float bridge—how are you going to divide?

Q. You think it can be done, I suppose?

A. Sure, it can be done, but if you do it right you will get the same unit for all of it. That is what your committee found.

Q. If I understand your position correctly, it is this: In substance that all of the switching services are practically identical and that when you get common cost from your records, that is the only answer you need. Is that what you mean? That there is no necessity for breaking down the various classes of service in component elements when you got the total for all the operations.

[fol. 395] A. We will divide it into a few parts again. You got your fixed expenses. In other words, you have your expenses other than your actual locomotive expenses to consider as group 1. Your maintenance, your traffic, your general, your transportation, other than your locomotive expenses——

Q. You have, don't you, your direct out of pocket expenses? You have your taxes and your rent and possibly a return on investment?

A. Let's leave out pocket expenses, because those come in to the other 10 per cent, the locomotive. See what I mean? All the others are there anyway, right?

Q. Yes.

A. Now, do you want to, in determining your costs, do you think, or are you asking me whether we should take team track traffic, which is all over the railroad, for example, and say, "Well, now, on taxes shall we put a little more tax on this car or a little more tax on that car?".

I say if that is what you want to do, I think that you are just kidding yourselves. You are going to have to allocate those expenses per unit, and there is, in fact, no difference of any material nature that would lead anyone to believe that those expenses can be allocated against the various classes of traffic except on an equal basis and that is what your operating committee report found and when I got a request to go back and look at the figures it wasn't those [fol. 396] figures they wanted to look at, it was our out-of-pocket expenses, namely, our locomotive expense, which I am trying to tell you is such a small part no matter what you did with that you would not change the total to any material extent. Now, to go to Hoboken and for one day or one week to try to run a time study on the locomotives, in view of the fact that traffic volume, traffic character, traffic service, is varying every month in the year, for instance during the pineapple season we operate one way, when refinery sugar is flowing still something different. In other words, at all times during the year the operation of that railroad is changing, depending upon the character of traffic. Some times you do more to handle a team track car and sometimes you do less. The steamship ships from the Swedish American Line from south of 14th Street to North of 14th Street. When all is said and done your time study couldn't possibly change your total unit cost to any material extent and you would have to carry it on, not for any test period, but you would have to carry it on for approximately a year. Now, if the request had been sincere, we would have considered it a great deal more carefully than we did when we found out what was really in back of it.

Q. You said that Mr. Bordwell, formerly general manager of Erie and since deceased, made the statement that $1.00 a ton was a fair allowance. Is it not a fact that when he [fol. 397] made that statement you coupled it up with a reservation to the effect that it might be a proper allowance provided the 40 cent payment made by Hoboken to Seatrain was proper.

A. No.

Q. You don't recall any such reservation?

A. There wasn't any such reservation. If you want to know, just ask your vice president, Mr. Gray, or your assistant, Mr. Manley.

Q. Were they there?

A. Mr. Bordwell made it. It was made subsequently to Mr. McCollester, Mr. Hodkinson and if you really want the information ask some of your counsel around the table here.

Q. Now, this operating sub-committee was not dealing with the question of allowances, was it?

A. Well, it took me three years to find out if they were or weren't. They didn't know.

Q. Did you find anything in their written report where allowances are mentioned?

A. No.

Q. In fact, the first paragraph of that report states the purpose of this study was based upon figures you supplied to them, isn't that correct?

A. That is, as I recall, and we would go back to the traffic officer and say, "Now, here, how about this allowance?" and they would say the operating committee are working up [fol. 398] the figures for the allowances and we would say, "We worked up the figures for the allowance, but we have no authority to set the allowance", and back and forth for months and months and years and years. That is why we brought the case.

Q. Am I correct in my general understanding that under the terms of the exhibit, No. 11, which was the agreement of November 21, 1932, providing for the payment of 40 cents allowance by Hoboken and Seatrain at that time, immediately following the signing of the contract, that Seatrain performed the work of moving the cars between the hold yard and the cradle of the vessel?

A. No, Hoboken's account.

Q. And was that performed with this gasoline locomotive?

A. That is correct.

Q. And were the employees operating the locomotive those of Seatrain or of Hoboken?

A. Well, when they operated the locomotive, they were employees of Seatrain?

Q. And you paid them?

A. We rented the locomotive and paid the employees.

Q. Who determines the order in which these cars shall be placed on the cradle? Who makes the selection as to the car which is to be taken first and then the subsequent car and then the next car?

A. Well, in theory the first mate.

[fol. 399]. Q. Seatrain, in other words, determines the order in which the cars will be loaded.

A. The first mate is responsible for loading the ship safely, subject to the Captain's orders. The captain is responsible to see that it is in seaworthy condition before it leaves its dock. In a seaworthy condition, that means.

Q. In other words——

A. (continuing) From three o'clock on, on Wednesday, they just throw the cars in the ship just approximately the way they come. You end up with a list, all right—you just pump up a tank in the side of the ship to equalize the load. Now, as a practical matter I said theoretically the first mate is responsible; he in turn to the Master. As a practical matter the Seatrain pays a portion of the salary of, I think it is the superintendent of the Hoboken, on the theory that he is, in turn, acting for the first mate in directing approximately how these cars are to go on the ship.

Q. Now, coming next to your exhibit No. 18 which is the contract of February 24, 1937, and presently in effect. I wish you would look at the map, exhibit 29 presented by witness Fletcher and delineate or describe what property is held by Seatrain under the lease from Hoboken Manufacturers Railroad. The exhibit refers to parcel B in the lease of June 19, 1906.

A. Parcel B is that parcel in red, the whole parcel in red, [fol. 400] labeled "Seatrain berth". That consists of land above water which ends just to the left of the words, "Car cradle" and runs over to the property called Campbell Stores. That is the land above water in plot B. The balance of plot B is land under water and is extends from that line to the left of the car cradle out to the end of the section marked in red.

Q. Well, would this be a simple and accurate description? It embraces all of the area colored in red east of Hudson Street extended and north of Campbell Stores?

A. That is correct for plot B.

Mr. McCollester: That is more than is leased to Seatrain.

Examiner Hoy: Off the record a second.

(Discussion off the record.)

By Mr. Pierson:

Q. Is this a correct statement, Mr. Brush? Parcel B referred to in the third paragraph on page 1 of exhibit No. 18 embraces all of the land colored in red on Exhibit No. 29 and east of Hudson Street extended? Is that correct?

A. That is correct.

Q. Now, as I understand it, Seatrain, under exhibit No. 18, does not lease all of the plot B?

A. No, Seatrain only leases a part of plot B. It does not lease the area north of Campbell stores running approximately 250 feet to the end of the slip labeled "Seatrain berth". Seatrain leases the balance of plot B which is all [fol. 401] land under water on which a trestle has been built and a crane has been erected.

Mr. McCollester: Off the record.

(Discussion off the record.)

Examiner Hoy: We will have a five minute recess.

(Whereupon a five minute recess was taken.)

By Mr. Pierson:

Q. Is the contract in evidence as exhibit 19 the result of any conference or negotiations or discussions between the Hoboken, on the one hand, and the Seatrain on the other?

A. Yes.

Q. When did that take place?

A. We discussed that, the form of that contract, over a period of a year and a half, I guess.

Q. Who represented Hoboken in those negotiations?

A. Well, the staff of Hoboken, Mr. MacGowan and Mr. Cossolini and Mr. Mathey and Seatrain's officers worked the thing out together.

Q. Who were the Seatrain officers?

A. Myself, Mr. Hodgson, and Mr. Reyner. We are also officers of the Hoboken. There was nothing in this exhibit 19, which is the operating contract, there was nothing there to work out, it was a matter of policy, whether Hoboken was going to enter into the same arrangements which it had with [fol. 402] other—enter into the same arrangement with Seatrain as it had with other water lines, and we finally decided that was the thing to do.

Q. All of the various parties who participated in thes conferences and negotiations were employees or officers, both Seatrain and Hoboken?

A. No, not Mr. McGowan and Mr. Cossolini. They ar not employees of Seatrain. As I say, that contract is merel putting in writing what Hoboken—putting in writing th arrangements which Hoboken had with other steamshi lines and putting Seatrain's name on it. All there was t that contract is a pure matter of decision of policy. Ther was no negotiation or working it out.

Q. As I read exhibit 19, all of the physical handling o the cars to and from the cradle is performed by Hoboke Manufacturers Railroad Company with its own employee and the Seatrain does not perform any operation of an kind under this new contract?

A. That's right, just the same as the Hoboken does wit all other steamship lines.

Q. That was the same under the old contract too, excep that Seatrain acted as the agent of Hoboken to do the sam thing. There was just a link in there which didn't chang the legal effect but put in for various reasons.

Mr. Pierson: And under both exhibit 11 and 19, th [fol. 403] services covered thereby were actually in bot instances by Hoboken but under exhibit No. 11 by Hoboke as an agent for Seatrain.

Mr. McCollester: No, in both instances the theory o the contracts, if I may make this statement——

Mr. Pierson: I would be glad to have it.

Mr. McCollester: It is Hoboken's obligation to move th cars to and from the cradle. Under the present contract exhibit 19, Hoboken does that directly. Under the origina contract, exhibit 11, if that is the correct number, we had some complications at that time, which I don't think it i necessary to go into here, which seemed to make it desirabl to have the form of the contract one in which, although th obligation was the obligation of the railroads, the railroa employed Seatrain as its agent to perform that part of it obligation and Seatrain actually performed as agent b in turn using the railroad's locomotive and railroad's crew in reimbursing the railroad for them. But both of them are on the theory that the obligation of the railroad is t do the switching to and from the cradle.

By Mr. Pierson:

Q. I notice in exhibit No. 11, page 3, a statement is made that it is important for Seatrain that cars be placed on car elevator in a certain order and at certain times and such placement cannot be handled conveniently by the railroad. Now, under contract marked exhibit 19, the railroad com-[fol. 404] pany, as a principal, does perform all of the service to and from the cradle.

A. That is correct.

Q. But, I assume, it does it under the specific directions of the Seatrain as to method and manner of bringing the cars to the cradle and taking them away?

A. Well, as I have described, where it is any water line's privilege to ask is a car to be delivered at a certain time or cars to be delivered in certain order, yes.

Q. Now, is this 73 cent payment, referred to in exhibit 19, based on any costs incurred by Seatrain?

A. It is based solely on what it would cost Hoboken to do—to make delivery in accordance with its tariffs to Seatrain if Seatrain was to take the freight as any other common carrier takes it.

Q. It is not based on any out of pocket expenditure made by Seatrain?

A. Such couldn't be when you take into consideration there is the use of a patent as a part of the consideration.

Q. Well, then, the 73 cents, as I understand it, does not represent any out of pocket expenditure by Seatrain, but does represent a reimbursement to some extent at least, to Seatrain of its interest in the patent?

A. Yes, to some extent and to some extent for Seatrain's investment in order to make this type of interchange pos-[fol. 405] sible. Just the same as when we made a contract with Pan Atlantic, for instance, and paid them the normal rate for loading or unloading cars, the first thing they did was turn around and made an investment in some machinery and so forth to make it cheaper for them to perform the service in connection with their own loading and discharging operation. Now, Hoboken didn't take the position that the minute they made an investment which actually brought down their out-of-pocket expense that the contract with Pan Atlantic should be reduced. I think that is quite improper and that is the position that Hoboken has taken with Seatrain.

Q. Now, you have mentioned several elements which go to support the 73 cent charge. Are there any others that you can think of?

A. Well, to state it once again, to make it perfectly clear, we put in our various contracts; by comparing the contracts you will find that Hoboken cannot make to any other water carrier that interchange any cheaper than 73 cents. In fact, 73 cents was set 1 cent less than Hoboken's minimum payments, all things considered.

Q. Then, you have never attempted to assign these various elements such as the patent rights to a specific amount as a proportional part of the 73 cents?

A. No.

Q. At the present time does——

[fol. 406] A. You are speaking—you are asking me that question as Seatrain, are you, because it is none of Hoboken's business. If you ask me of Hoboken, I just got to tell you it is none of my business.

Q. Well, Hoboken is a party to this contract?

A. That's right. Hoboken made the best bargain it could with Seatrain. Seatrain says it wanted just as much as it was paying everybody else and no more and no less.

Q. You are president of both Seatrain and Hoboken, are you not?

A. That's right.

Q. And Seatrain owns 3,993 or 3,995 shares of the capital stock of Hoboken?

A. That's right, and the reason we put the contract in that form was that so you people couldn't say that the contract was not negotiated. That is the reason we put the contract on the same identical basis that Hoboken had been doing business with all the other water lines and we took the amount of money that Hoboken was paying these other water lines for the same thing and we paid 1 cent less to Hoboken.

Q. I don't see where you get that it is none of Hoboken's business.

A. Hoboken as a railroad cannot expect a steamship line to invest lots of money in patents to save money and turn around and give it to Hoboken. Frankly, that is the whole case and we just don't believe in it, and I just can't con-

[fol. 407] ceive of the Commission or any court saying that the savings of Seatrain, due to its invention, belongs to

Hoboken or, in turn, to the Trunk Line. You are depriving Seatrain of its property, that is just plain confiscation.

Q. You think Seatrain should obtain reimbursement through this 73 cent charge?

A. I certainly do and I am not going to let anybody use my patent unless I get reimbursements, speaking of Seatrain. When somebody comes along and wants them for nothing, I am going to tell them where they can head in as we have told Hoboken. We are going to make a reasonable charge. The basis of reasonableness is what Hoboken pays the other people.

Q. Did anybody on the Hoboken object to this 73 cents?

A. They couldn't if it was identical with all other contracts.

Q. Did they?

A. Not at all.

Q. They were well satisfied?

A. Certainly. It was a wonderful thing for Hoboken. They got a lot of traffic, cut down its costs, were able to go ahead on the basis of this contract, kept its head above water.

Q. Your original contract, marked exhibit 11, provides for the 40 cent payment, which, I believe you stated, was justified in part by reason of the added traffic brought to [fol. 408] the Hoboken by reason of Seatrain's operations?

A. That is correct and that is what Hoboken thinks, it is a fine thing to pay Seatrain 73 cents for getting something, that Seatrain is entitled to when it gets this traffic for nothing.

Q. Is this element of added traffic to Hoboken, by reason of Seatrain's operations, also on a par basis with the 73 cents?

A. Certainly. Added in, it is an important part of it.

Q. Does that cover all the items to justify the 73 cents?

A. I think so.

Q. And none of them are separable? Just in the aggregate to make a reasonable charge in your opinion?

A. I can't see it otherwise.

Mr. McCollester: You understand, Mr. Pierson, the difference between the 40 cents and the 73 cents, don't you? 40 cents was on all freight and the 73 cents is only on freight moving under lighterage free rates. In other

words, there is no payment made to Seatrain under the present contract where the freight moves under rates that do not include shipside delivery.

Mr. Healy: Although Seatrain's rates may be the same in either case, on lighterage free freight, or non-lighterage free?

The Witness: Yes, the same as Pan Atlantic, for ex- [fol. 409] ample.

Mr. Healy: You mean Seatrain doesn't vary its rates according to whether the freight is non-lighterage free or lighterage free?

The Witness: That wouldn't be on the same commodity.

Mr. Healy: It would be on the same commodity moving between two different points.

The Witness: I don't know of any such cases. I can't answer that question, whether there will be a difference or not. I think if there is, it would certainly be determined by Seatrain on the basis of what the other water lines were doing.

By Mr. Pierson:

Q. Perhaps I have already asked you this question, but does Seatrain at the present time perform any operation of any kind in connection with handling this traffic other than using the crane?

A. The interchange is at the ship's cradle. Seatrain performs the operations from there on or vice versa Seatrains operations and when it unblocks the car and says to Hoboken, "you take it".

Q. Who pays for the electric energy used in handling this crane?

A. Seatrain. We consider the crane as nothing but a crane on a ship for lifting the cargo aboard. As I see it, you got an identical situation that you gentlemen have all [fol. 410] the time where you have marginal tracks on the dock and an open top car and it is lighterage free freight. What happens? You pay the steamship line for unloading the car. Do they do it? They do not. They hook on, right on with their crane, right to the goods on the car and put it aboard.

Mr. McAllester: You mean they don't unload from the car to the pier?

The Witness: That's right. There is no such operation. It takes place in all ports of the United States. All steamship lines pay except Seatrain.

By Mr. Pierson:

Q. This morning you said that the freight, which is picked up by truck, at your New York-Brooklyn station, and delivered to the Hoboken. What point is the delivery made at Hoboken to, the freight house?

A. Sometimes what we call 15th Street.

Q. Is that loaded into cars?

A. Seatrain there loads it into cars.

Q. From that point Hoboken takes the car from the cradle?

A. Hoboken switches the car to the cradle and charges Seatrain for the switching.

Q. How much?

A. The same as the truckline up to March 1, 1937. Since then they have assessed $16.00 a car; if it is lighterage free they charge Seatrain 75 cents per ton additional [fol. 411] and then compensate Seatrain 73 cents a ton for the use of its patents. That is, in addition to the $16.00 a car.

Mr. McCollester: That has been increased to $17.60?

A. That's correct. Under Ex Parte 123, those rates have been raised 10 per cent.

Mr. Pierson: That's all I have, Mr. Examiner.
Thank you very much Mr. Brush.
Examiner Hoy: Any further cross-examination.
Mr. Eshelman: I have a few questions.

By Mr. Eshelman:

Q. On this open top freight which would be delivered to the ship on an open pier where unloading is not necessary, did I understand you to say that it is the practice of the Trunk Lines on lighterage free freight to make a payment to the ship in lieu of the expense that would have accrued to them if they had to unload that freight?

A. The Trunk Lines in New York Harbor, any pier with a marginal line on it?

Q. You can answer that better than I.

A. I frankly don't know at the moment.

Q. I misunderstood your testimony.

A. Let me state it this way. It doesn't have to be a marginal track so long as the track is within reach of any ship tackle, either special tackle or otherwise. It doesn't even have to be an open top car. It is the practice, as Mr. Matthews testified, here in New York Harbor for the Trunk [fol. 412] Lines to pay the steamship lines for unloading cars or for loading cars and I am merely pointing out that when you have a contract like that, a steamship line can, if it wishes, put on a special crane that will reach down, even in a pier, and it will go right into a car and pick up the packages in the car and put them right in the ship. There is no unloading of the car on the dock, as we have all discussed here today, with any steamship line with such a contract to do that and, in fact, they do do it.

Q. Would that be, within, say a hundred feet of the ship, wherever is the customary boundary that you recognize in the maritime end of it?

A. That is correct. In other words, all you need to do, as I am trying to point out, is for you to equip your ship and your terminal, and you can accomplish the same thing as Seatrain accomplishes with the ordinary ship, and you would have the same problem if you wanted to raise it. The answer to the steamship lines would be to you what Seatrain has given Hoboken. If you don't pay, go ahead and unload the car. We are not going to provide special facilities, terminals, ships and this, that and the other thing to perform a contract for you people unless we are going to get paid for it.

Q. This question is a little out of sequence, perhaps, but are you personally the owner of the Seatrain's patents?

[fol. 413] A. No.

Q. I think Mr. Pierson asked you who is the owner but I think you said that Seatrain was a licensee?

A. Exclusively.

Q. Do you care to state to us who the owner of the Seatrain patent is?

A. Yes. A corporation called railway transport, in which I own a small percentage of the stock. There are 700 people that own stock in that corporation.

Q. Returning to your exhibit No. 7 for a moment. Will you say in what portion of that exhibit are the figures that contain the 73 cent payments by Hoboken to Seatrain?

Would it be the upper portion under the 1937 figures? Would it be under the station employees—handling?

A. That is right.

Q. That would be for the 10 months during which the contract was in effect in 1937?

A. That is right. In other words, in $168,479.11. The 73 cents is in there for ten months on lighterage free freight.

Q. I think I did not hear fully one of your answers to Mr. Pierson about l. c. l. freight. Now is the l. c. l. freight handled which would come to Seatrain from the New York area? That is, which has had no prior rail haul before going to Seatrain; that is, no trunk line haul?

[fol. 414] A. It is handled in two ways. It is handled by carloading consolidating companies who receive freight, truck it to Hoboken and load it into cars and then say, "Seatrain, it is yours, you pay the Hoboken for switching and so forth and so on."

The second way is by Seatrain itself where l. c. l. freight has been obtained without the use of the carloading company. It is delivered either direct to the freight station at Hoboken by truck or maybe dropped at one of Seatrain's stations in New York or Brooklyn and Seatrain has a contract for trucking that freight over and there loads the cars—no, Seatrain does not load the car, Hoboken loads the cars and Seatrain pays them $1.45 a ton.

Q. Is it the Fifth Street Station in Hoboken?

A. That particular freight—in other words, Seatrain's l. c. l., not the carloading companies, I think that is always handled at the Fifth Street station.

Q. How about the carloading companies' freight?

A. The cars are likely to be spotted anywhere along the rail line for the carloading companies. That does not go through the freight house. They bring it over with trailers and wherever the car is spotted on temporary tracks they load it right there.

Q. But in any event there would be a switching by Hoboken which Seatrain would pay the regular rate on?

[fol. 415] A. That is correct.

Q. Is that the $16.00 rate, or the $17.60 rate, I believe you said, Mr. McCollester?

A. When Hoboken loads or unloads, it is the $1.45 rate, plus. When it is moving as a consolidated carload it moves

on the carload rate and therefore the Hoboken—Seatrain pays Hoboken $17.60 plus $.75, less $.73.

Q. Do you know whether or not this $2.50 per car, that is according to the operating contract, stated as a commuted lease for rental for locomotive service on Seatrain's own traffic between lighter and the cradle, do you know whether or not that money which Hoboken receives for that, as to whether that appears in its accounts as rental for locomotives?

A. No, it is in switching revenue, I believe. I had a chance to check that with Mr. MacGowan, our superintendent, as to how far he went into a cost study before that figure was arrived at, and he has informed me that the figures which made up that $2.50 were not as I testified. In the case of the little gasoline locomotive, he actually figured as if he used the big locomotive and he figured about 10 minutes per move, per car.

Q. And does that same payment cover that movement even though it be necessary to go into the supporting yard?

A. Yes. That was taken into consideration at the time.

Q. In those cases, where the car would come somewhat in [fol. 416] advance of the actual movement to the cradle, would that car be placed in the supporting yard along with the other cars for Seatrain and move then by the gas locomotive to the cradle as are the other cars?

A. Yes, I think that is what would happen where Hoboken, for its convenience, wanted to move that car off the trestle, to take it out into the supporting yard and that car would be brought back to Seatrain by the gasoline locomotive.

Q. Do you know whether Hoboken pays its engine crews standard rates of pay?

A. They pay the same as the trunk line railroads.

Q. And how many men are on their engine crews, on the Diesel electric, for instance?

A. You have got three.

Q. And on your gas engine?

A. Three. You got two plus a switch tender. He actually isn't on the locomotive.

Q. Is that crew in each case?

A. That is on the gasoline locomotive.

Q. Two and one, then?

A. I don't know whether my answer should be two to your gas locomotive, or two plus another man, which, as a practical matter, has got to be there.

Q. Then, on the Diesel electric, is that one more man than on the gas?

[fol. 417] A. No.

Q. That is also two and one?

A. Well, you got your regular crew.

Q. That is what I was getting at.

A. I think it is usually spoken of as three, although your switchman is not always on your locomotive.

Q. I believe you testified there was quite a substantial portion of business of Seatrain's, which originated, or terminated on the Hoboken itself. Now, would you illustrate that with the use of one of these maps as to where, for instance, typical shipments would originate or terminate of that sort?

A. Well, Seatrain's tariff provides delivery on the Hoboken Manufacturers Railroad. The Hoboken is a party to those tariffs.

Q. Hoboken is a party?

A. Party to those tariffs, and therefore it is not Seatrain's say where that car is to be spotted; it is Hoboken's and Hoboken spots it in accordance to either convenience or the consignee's request.

Q. That is also a service that is covered by this former $16.00 per car charge, either with the 75 cents or not, depending on whether classes are lighterage or non-lighterage freight?

A. That's right. In other words, it is identical as though [fol. 418] a car comes of the Pennsylvania Railroad for Hoboken team track. Well, the consignee would say, "Well, I would like it up here", or "I would like it down here," and Hoboken would spot it in either place. Now, the Seatrain, it happens, instead of coming in here, it happens to come off here and the same thing takes place, the car may be spotted down here or down here (indicating).

Q. From a practical standpoint is there very much of this that would be subject to this so-called 75 cents per ton charge in addition?

A. Yes. A much higher percentage on Seatrain—a much higher percentage of Seatrain traffic is lighterage free than

has recently been running by the Trunk Lines. In other words, our percentage of lighterage free——

Q. Now, I am not clear as to what is the distinction between what you call lighterage free and non-lighterage free freight which involves no trunk line haul in the New York area, or beyond. For instance, take Seatrain traffic terminating somewhere in the New York Harbor area. In what cases would that be so-called lighterage free freight and therefore come under this 75 cent additional provision?

A. Well, let's take a case with the Morgan Line. The Morgan Line rates, we will say, are made for delivery to any point within the lighterage limits of New York Harbor. Well, Seatrain rates are made the same way up to now.

[fol. 419] Q. Well, then, how would you get a case where the 75 cents didn't apply?

A. For example, take liquids moving in tank cars.

Mr. McCollester: If I may interrupt. I think that the confusion here between freight to be lightered by Seatrain around the Harbor and what Mr. Eshelman is talking about, which is freight on which the Hoboken charges 75 cents——

Mr. Eshelman: Not charges us 75 cents.

Mr. McCollester: No, charges Seatrain 75 cents. In other words, Mr. Eshelman is asking about the freight originating, or terminating on the Hoboken, which you have referred to as lighterage free freight on which the Hoboken charges 75 cents in addition to the $16.00.

Mr. Eshelman: Yes. I am more interested in Seatrain traffic and I just got the impression there are two sets of rates northbound from the southwest to the New York Harbor. Do certain of those include lighterage service and certain do not?

A. Let me see if I can clear it up. Let's assume that the rate is not paid to any point within the lighterage limits of New York Harbor, but as a commodity which moved to Weehawken, five feet off the pier line, would have a lighterage free rate; Seatrain rate is lighterage free. Let's assume that commodity was not lighterage free freight. If it had moved over to the Weehawken yard of the Erie for [fol. 420] delivery on the team track in their yard, then I think I am correct in saying via Seatrain that would be a non-lighterage free rate and we would not load or unload the car.

Mr. McCollester: Mr. Brush, if I may interrupt again, I think there is a confusion still. You were talking about Seatrain being lighterage free or non-lighterage free. Isn't it a fact that the Hoboken Manufacturers Railroad, for movement over its line, publishes as freight which it will deliver to shipside, in other words, what is commonly called lighterage free rates, rates on the same list of commodities that the Trunk Line publish lighterage free rates on when it moves over the trunk line, and that is entirely apart, whether it is Seatrain lighterage or not.

The Witness: That is what I tried to use in the last.

By Mr. Eshelman:

Q. Let me see if I can get this. Let's assume that somewhere in Hoboken is an industry which will receive possibly several commodities which originate in the southwest, come up via Seatrain. Are there some of those rates, which, for competitive or other reasons are so published that they could go anywhere within the lighterage free rate within the Harbor and might come within this 75 cents and other commodities which might be limited to that?

Mr. Mathey: We have named in our tariff, which names the switching rate between points on the Hoboken Manufacturers Railroad and the Seatrain docks. We refer to [fol. 421] another tariff which covers our loading and unloading rules exempted from the Hoboken Manufacturers Railroad, which are exactly the same commodities which are non-lighterage free with the railroads. So, therefore, if a shipment was moved from the link line to Hoboken lighterage free, then that same shipment would be shipside.

Mr. Eshelman: I believe I get it.

Mr. Mathey: In other words, it is not entitled to a shipside delivery and so on.

Mr. Eshelman: And so on those same commodities, you say if it comes by Seatrain you will follow the same rule?

Mr. Mathey: That's right.

By Mr. Eshelman:

Q. Now, then, coming to the amount of it, do I understand from you that most of the traffic of Seatrain which would be terminated or originated on the Hoboken would be of the

lighterage free class and therefore would move under thi
75 cent additional, minus the 73 cent basis?

A. Let me say this: you said most of it; I will say more
there is more of that traffic in connection with Seatrain
so-called local business than there is at the present time i
connection with Trunk Line's and Seatrain's.

Q. That would be more than half?

A. Yes, more than half. Those figures, incidentally, var
from month to month all over the lot.

Q. What would be some of those typical northbound shi
[fol. 422] ments that would be delivered on the Hoboken?

A. Well, from New Orleans, for example, salt, lumbe
celotex. From Havana, sugar, perishables. Do you wa
some more?

Mr. McCollester: And whether those would be subject t
the 75 cent charge on the Hoboken.

Mr. Eshelman: I didn't mean to ask that.

Mr. McCollester: May I ask him? It would, in genera
depend upon whether they moved over the Trunk Line, th
moved under lighterage free rates.

The Witness: I think that is true in all cases.

By Mr. Eshelman:

Q. Take for instance the salt, where would that be u
loaded on the Hoboken, for instance?

A. There are two divisions on salt. One goes to the L
high Salt Company warehouse, which is located just nort
of 14th Street in the building called Public Service, and th
rest of it goes to whatever team track the consignee wish
to use. Maybe uptown or downtown.

Q. And by uptown you mean north of 14th Street and b
down town——

A. South of 14th Street.

Q. And south of 14th Street where are the team tracks

A. Anywhere down along this private right of way,
team track, the whole length of it.

Examiner Hoy: Is known as what?

The Witness: Is available for team track delivery
[fol. 423] private right of way.

By Mr. Eshelman:

Q. In the case of lumber, where would lumber be delivered on the Hoboken?

A. We have no lumber dealers on the Hoboken at the present time and therefore it would be team track delivery.

Q. How about Celotex?

A. Same thing.

Q. How about sugar?

A. Same thing. Only occasionally sugar goes into a warehouse. It might be into Campbell stores or it might move, for instance, to the so-called Castle Point here. Some of it was stored there. It might go to one of the vacant piers or any vacant pier that there may be, like pier 16, or it may be delivered right to trucks.

Q. How about perishables?

A. It is all team track.

Q. And where are your principal team tracks? You described the one south of 14th Street, but north of 14th, I don't know which are which?

A. South of 14th Street, the whole line may be used as team tracks. North of 14th Street, the main yard from the Erie interchange down to the line of Bloomfield Street is a solid yard and cannot be used as team tracks, and there are several tracks in the so-called supporting yard that could not be used, five of those tracks could not be used as [fol. 424] team tracks but all other tracks may be used as team tracks.

Q. May I ask, for your own purposes, do you make any difference in the designation of the upper part of the yard near the Erie interchange and the points south of the scales—a point east of the scales? You call one an "A" yard, and one a "B" yard.

A. No. I also refer to them as the Seatrain yard and the supporting yard. As a matter of fact that yard is used for general team track delivery as much as it is used for Seatrain track delivery.

Q. On that freight, after delivery, I take it that the empty is—what disposition is made of the empty?

A. The Hoboken returns the empty to Seatrain unless it has a load either out in the direction of the owning road via the Erie interchange, or to Seatrain. For example, we do get cars from the south many times that belong to the New

York Central or the Erie, or the Pennsylvania coming up under loads that we have never handled, and those cars are not returned empty to Seatrain to in turn take back to New Orleans, as we could do under the car service rules and should do in accordance with your instructions. They are loaded to your own lines.

Q. Is there any substantial movement of freight originated on the Hoboken going to the Seatrain southbound?

A. Yes, a very substantial volume. As I have said, giving [fol. 425] you the car—the actual number of cars handled both by Hoboken, both in connection with the Trunk Line and Seatrain and in connection with Seatrain.

Q. I didn't mean anything in connection with the Trunk Lines. I meant originating on the Hoboken.

A. All the cars which Hoboken interchanges with the Seatrain are cars which Hoboken originates on.

Q. What were they in 1936?

A. In 1936 there was Seatrain's local carload traffic, 2,710 cars.

Q. That is in both directions?

A. That is in both directions, and in 1937, 2,634 cars. In addition there were 443 cars of Seatrain L. C. L. that the Trunk Line didn't handle, and 388 cars in 1937.

Mr. McCollester: That L. C. L. originates down here at the Fifth Street station primarily, or mostly?

The Witness: I wouldn't say that. Seatrain's own L. C. L. is a very—well, it may run 20 per cent of our total L. C. L. Most of it is consolidated carloading company cars.

By Mr. Eshelman:

Q. This $16.00 charge, if I may so term it to avoid going into the ramifications, was formerly a dollar per ton, was it not?

A. That is correct.

Q. How long ago was that? Was that prior to the re-arranging contracts effective March 1, 1937?

[fol. 426] A. That's right. We charged the Trunk Line a dollar a ton up to that time, and we charged Seatrain—and we paid Seatrain 40 cents a ton on all Seatrain traffic. After March 1, 1937, we billed the Trunk Lines $1.35, or 60 depending on whether it was lighterage free or not, and we billed Seatrain $16.00 a car and if lighterage free plus 75 cents per ton.

Q. Could you give any estimate, or any idea as to what would be the average load of cars handled under this so-called $16.00 rate?

A. Well, I think it runs about the same as your average, somewheres around 30 tons, or a little under.

Q. About as shown on your exhibit 24, I think it was. Seatrain and other traffic?

A. Yes. It is the same commodities. They just happen to stop here rather than go on a little further.

Q. While you have this map before you, could you tell me if piers 5, 6, 10, 11, 12, 13 and 16 are leased by the owners, to any steamship line, if you know? I think Mr. Mathey stated that certain of the piers were either leased or assigned to certain steamship companies. I wonder if you would could tell us about the ones that he did not refer to.

A. Well, starting on exhibit 1 at the left hand corner.

Q. For instance, piers 5 and 6, that he did not mention. Can you state whether those are leased to any lines?

[fol. 427] Mr. McCollester: You don't mean leased by the Hoboken Manufacturers Railroads?

Mr. Eshelman: No, not by the railroad.

The Witness: Those are government piers and at the present time the American Republic Line is using them. The Uruguay and the Argentine being tied up there at the moment. There is still a question of whether they are actually going to use them for freight or not. Pier 4 is used by Pan Atlantic. Pier 3 is used by the Red Star.

By Mr. Eshelman:

Q. What is pier——

A. And so on down the line, as Mr. Mathey has already testified to.

Q. What is pier 10?

A. Pier 10 belongs to General Foods.

Q. How about pier 11?

A. Pier 11 is a part of the—I beg your pardon. Pier 10 belongs to the D. L. and W. It is a lighterage pier. Pier 11 belongs to General Foods.

Q. Pier 12.

A. Pier 12 is a dry dock pier, Bethlehem Ship Building Corporation, and so is 13.

Q. Do ships take cargo at pier 12 to any extent, do you know?

A. No, they do not take cargo at pier 12.

Q. You say 13 is a Bethlehem Ship Building Pier, too?

A. Yes.

[fol. 428] Q. How about pier 16?

A. Pier 16 has no permanent line at it. The Hoboken Dock Company will rent it for occasional ships to come in. For instance, I think it was used some short time ago for a lot of wood pulp which went out over the New York Central.

Q. Do you mind describing how the delivery is made to Pan Atlantic of eastbound freight coming off of the trunk line? I take it that you perhaps described it in a somewhat general way in your original testimony and I suppose that might be described somewhat as following the classification being moved on down of the general area of the pier. Is that right, or is there a holding in the yard first?

A. There is obviously, in connection with all steamship rates, a holding in the yard unless the ship is in and the ship is ready to take it. That applies to them all.

Q. Would you say the practice would vary to some extent as to what extent they will take the freight as it arrives, depending upon the capacity of the piers that they may own or, in other words, do they all wait until the last minute?

A. No, it doesn't depend upon the capacity of the pier, necessarily. In fact, very infrequently, because Hoboken contracts with the Steamship line or their stevedores and that freight that comes off the Hoboken out of a car keeps going right into the ship's hold, whereas if Hoboken didn't contract, they would have to wait until they called for it, [fol. 429] and they take it down and put it on the pier and then pick it up and put it in the ship's hold.

Q. Take, for instance, freight from wherever it may be in the east, just so long as it is far enough away to be entitled to a lighterage delivery, going, we will say, to Pan Atlantic. That would come to you from the Erie, we will say, and then what is the general or the typical handling from there on? I suppose in the first place there is a classification in the main yard?

A. Yes. That first classification would probably be to downtown. My guess is that this car would be moved downtown and held downtown and not uptown. The car would

be held somewhere along their private right of way until the Pan Atlantic called for it. You would then move it to Pan Atlantic pier.

Q. When you say the Pan Atlantic pier, will you point out where, on this map, that car would go?

A. Well, it would go—it would go right under the words of "Shipping Board Piers" to one of those tracks.

Q. And then how would that freight be gotten down to the pier by the stevedore?

A. The car is unloaded from that point, put on, usually on trucks and tracked right down to the side of the ship.

Q. That would probably be not hand trucks, some kind of a power truck?

[fol. 430] A. Sometimes power, sometimes hand. When we actually did the work we used hand trucks for a while and then got our stevedores to spend a little money to put something a little better in.

Q. What, roughly, would be the distance from the place that this car is spotted down to, well, we will say, half way down pier 4?

A. It might be 400 feet at this particular point, for this particular pier.

Q. May I ask you this: On this map the scale says, "One inch 200 feet." Is that right from this reproduction?

A. On the basis of that, the total might be 600 feet.

Q. Whatever it would figure?

A. Whatever it would figure.

Q. And substantially would the same system of operation pertain to the Holland American?

A. Your distance is cut down.

Q. The car would then be spotted, I suppose, somewhere in the neighborhood of Fifth Street?

A. Well, actually, the Holland American, you can go right into their pier. It all depends upon the pier. Some of the piers have got railroad tracks actually on them. Some of them have got it in their head-out and some of them are a long way away and renting for the piers are in accordance with the facilities—rail facilities in connection with it.

[fol. 431] Q. Now, on piers 14 and 15, are there two tracks on each of those piers?

A. Yes, as I recall.

Q. Those are covered piers?

A. Those are covered piers.

Q. And those two tracks are substantially in the center of the pier?

A. Yes.

Q. Now, would non-lighterage freight to the Pan Atlantic, or the Holland American, be handled in the same manner with the exception that the stevedore would get his compensation out of the freight, or from the shipper rather than from the Hoboken?

A. Would you read that question?

(Question was read by the reporter?).

A. Yes, I think—yes. In other words, Hoboken's delivers its nearest to shipside or string bed, and if they don't supply a track we can't get within 600 feet of that, that is their fault and they must take it.

Q. Well, in any event the physical handling in the two classes of freight would be substantially the same, and it is only a question as to who pays for the, you might say, the unloading service?

A. Yes. I think that is true. Let me—yes, I think that's true.

[fol. 432] Q. Can you say about how frequently the Pan Atlantic boats sail?

A. I think they have two sailings a week now.

Q. Piers 14 and 15 are covered piers—I guess I asked you that.

A. Yes, they are covered piers. Those two piers give you an illustration that if the steamship line wished to invest some money and move those tracks out so that the slings could reach freight in cars on those tracks, you would run into that situation that I mentioned before, or if they should come around to the Seatrain berth, which is an open berth, with tracks on it, the same thing would happen there.

Q. What stevedoring firms other than Ryan and Jarca, if I pronounced that right, does Hoboken pay?

A. We have used a firm named Hogan and Son. Our contractor for Seatrain is Clark—John T. Clark and Son.

Q. And do their rates of compensation, which Hoboken pays them, compare with the rates shown in the other contracts introduced, I think as 20 and 21?

A. Clark gets a little bit more. As I recall, he is getting 75 cents, as I testified. He is standing responsibility for the checking of the freight where none of the others take that responsibility.

Q. Which of them gets the lowest rate?

A. The lowest rate is to Pan Atlantic, the 70 cents rate. [fol. 433] That being, as I have said, due to their lower stevedoring costs on account of solely interstate freight.

Q. Is any of the freight which is lightered between Seatrain's cradle and Seatrain's pier weighed at Hoboken?

A. Seatrain's cradle and Seatrain's pier? Yes, you might get a case like that, in which case a switching charge is assessed.

Q. You say a switching charge is assessed?

A. Yes.

Q. On anything that is weighed?

A. Sure, because after all Hoboken has got to handle it then.

Q. I thought under that $2.50 charge that tariff might go up anywhere in that supporting yard.

A. I said that is primarily for Hoboken's convenience when it does that. There are plenty of tracks down on that pier, or trestle. If Hoboken wants to clear them for its own use and wants to move them up in the yard, that is up to Hoboken.

Q. Would there be a weighing charge, then, on that?

A. Well, I assume. Frankly, I don't know.

Examiner Hoy: The hearing is adjourned until ten o'clock tomorrow morning.

(Whereupon the hearing was adjourned to 10:00 o'clock A. M., October 21st, 1938).

[fols. 434-435] Docket No. 27630

Hotel New Yorker, New York City, New York, October 21, 1938 at 10:00 o'clock A. M.

Met pursuant to adjournment.

Before: Examiner Hoy, Interstate Commerce Commission. Appearances: Same as previously noted.

[fol. 436] Examiner Hoy: All right, gentlemen, we will resume.

Mr. Eshelman: Mr. Examiner, except for just a few questions on other matters, which may not be over two or three. The remaining questions which we wanted to ask

Mr. Brush related to further explanation of the information which counsel for complainant furnished in response to Mr. Healy's request by Mr. McCollester's letter of October 15. We are having copies of that mimeographed for introduction as an exhibit and they will be ready immediately after the noon recess; maybe a little bit before.

I think we might hold those questions until that exhibit is before all of us if you like. I think Mr. Pierson has some operating matters that he could put on at this time if that would be any advantage. There will not be many questions and if agreeable to you and to Mr. McCollester, we will have that exhibit put before us and have it introduced at the same time.

Mr. Pierson: Our thought is that after the next few questions of Mr. Brush that the defendants would proceed and complete their presentation and following that a few questions will be asked of Mr. Brush concerning this exhibit which is now being mimeographed.

Mr. McCollester: That is all right.

Off the record.

[fol. 437] (Discussion off the record.)

GRAHAM M. BRUSH was recalled, and having been previously sworn, testified as follows:

Cross-examination (continued).

By Mr. Eshelman:

Q. Mr. Brush, I believe you stated that certain of the railroads leased piers and cranes to other steamship lines. Have you specific instances of that in mind?

A. In New York Harbor, yes.

Q. We will assume you meant New York Harbor.

A. I would like to check up on it before answering. I am sure there must be. Some of the railroad piers have cranes on them. I believe that several of the Erie piers at Weehawken, also I think it seems to me I recall that there is some overhead structure on the Black Diamond piers.

Q. I might say that my question was prompted by the fact that our own people tell us that we have no such in-

stances on the Pennsylvania. You have no information to the contrary to that, have you?

A. At New York?

Q. Yes.

A. No, I don't recall any overhead structure on any of the Pennsylvania piers, although I wouldn't be at all surprised to find that there are plenty of them. It is the usual thing to do.

[fol. 438] Q. Maybe I misapprehended the point of your testimony before. I thought your testimony was to the point that we leased piers and cranes. That is to say, that we leased the piers and cranes to steamship companies. Our information was that that didn't apply to us and I was wondering if you had any specific instance.

A. Are you confused by the use of the word——

Q. Clear me up on that.

A. Most piers—most modern piers—maybe you got obsolete piers, but most modern piers are built with various loading and unloading devices right into the structure, and they travel on the structure, the overhead structure of the pier. Now, that is all a part of the pier. If you were to rent that pier—if you owned it, you would lease those loading and discharging facilities.

Q. Well, cranes, as you interpret them, do you have any instances in mind? For instance, so far as the Pennsylvania is concerned, where that situation pertains?

A. No. I do not recall a Pennsylvania pier in New York being so equipped.

Q. And——

A. (continuing) I might add Mr. Mathews already testified in connection with certain special facilities both on the Erie and West Shore piers.

Q. Yes, I recall that. Just one little matter. At page 173 [fol. 439] and 174 of the transcript, I think your testimony is to the effect that two members of the Railroad Operating Committee agreed that the Hoboken's operation was a cheaper method of transfer, so far as the Trunk Lines were concerned than would be the lightering of that freight. In view of the fact that from my own examination of the report, of which your Exhibit 8, I think, was a small part, did not seem to confirm that and searching about for what you may have had in mind, I notice that Exhibit 14, in the letter from Mr. Gray and Mr. Brister, at page 2 in the second

paragraph, there is a statement to the effect that so far as those two lines are concerned, I believe, the Hoboken operation to Seatrain would be cheaper than lightering to break bulk lines and I wonder if that is what your testimony in this behalf related to.

A. Just off the record.

(Discussion off the record.)

By Mr. Eshelman:

Q. As you understand the report of the Operating Committee to which your Exhibit 8 makes reference in part, were not—did not the members take the view if they were to pay Hoboken the amount claimed it would be cheaper for the Trunk Lines to lighter and to use the all-rail route?

A. That is what the report said but as I have attempted to show, my testimony on pages 173 and 174, if the lighterage costs of the Trunk Lines on traffic which they actually handle to and from Hoboken are taken as correct, then their [fol. 440] conclusion was obviously wrong because if you will add up the belt line charges for the several carriers, plus the actual charges which you have paid Hoboken on freight, other than Seatrain and the actual billings which Hoboken had made on Seatrain's freight, to those belt line charges, you will find that the total of those charges is less in all instances except the Lehigh Valley Railroad, than the lighterage cost—your lighterage cost as determined by your operating division.

Q. I believe I know now the reason for this misunderstanding perhaps. I will state what I understand to be the fact and see if it is in accordance with your understanding. This study which the Operating Committee made took into consideration actual movement of the traffic and involved an actual tracing of cars from the original break up yard in the New York District and took into consideration the fact that numerous of those cars were not originally ordered to the Hoboken but were billed, we will say, to New York lighterage, and went down to the regular New York lighterage station of those roads and then took into consideration the fact as to the time when those orders for diversion to the Hoboken came and were predicated upon the costs which would have accrued in each case had the diversion to the all-rail route, that is, the ordering to the all-rail route, which at the same time is the ordering to the lighterage

route, and it was an actual study and therefore it wouldn't [fol. 441] be correct to simply add up those allowances, as you say. Was that your understanding as to the way they did that?

A. No. The reason they did it was to find out if the Trunk Line should stop all lighterage to and from points on the Hoboken that should have stopped the belt line on Hoboken as their regular means of handling freight to and from points in Hoboken, would they save money or would they lose money.

Q. May I ask at the time——

A. May I go on?

Q. Was this study begun at your suggestion to the Trunk Lines in order to clarify the situation as it then existed?

A. Again, I don't know that it was my suggestion. There were two points.

Q. It at least resulted from a conference which you had with them?

A. That is correct. It resulted from a conference that I had with the Harbor Lines' presidents, the point being that some of them felt that Hoboken was not an economic carrier, that you could do away with the Hoboken and still serve Hoboken. As a matter of fact, cheaper than you could by using Hoboken. Your own figures show if as not true except for the Lehigh Valley, as I have so testified.

Q. I will not argue with you on that, but I may say that I do not understand the figures because I don't agree that you [fol. 442] properly can add up those figures and say that that is what will happen but I did want to ask you this, was there some suggestion on your part to the Trunk Lines that the portion of Hoboken's operations, other than Seatrain, was somewhat a burden, from your standpoint, and that you wanted them to investigate as to whether they would take it over and would their operation and perhaps the diversion of lighterage freight to it, could make it a going proposition from their standpoint, leaving the Seatrain work to be handled by you?

A. No. The point of that phase of the investigation was this: As soon as the trunk lines decided to oppose Seatrain service, they immediately diverted traffic away from the Hoboken and put it on their lighters and you will find in the year 1932 that all of a sudden the volume of your lighterage to and from Hoboken increased about 300 per cent and Hoboken's traffic just completely disappeared.

Q. May I ask you this, prior to the advent of Seatrain and the building of the ships, that is to say, the car elevator in the place where the old float bridge was, was the float bridge the normal method of interchange so far as, we will say, the Pennsylvania, the Lehigh, the Jersey Central, were concerned?

A. That is correct.

Q. And the all-rail route as a secondary route?

A. That is correct. And that is the reason why, at that [fol. 443] time I asked the Trunk Lines to go into this matter, because if the belt line charges were in fact higher than your car floatage costs, then obviously there was something the matter with the belt line charges and that was in our own little bailiwick and it should have been straightened out amongst yourselves. The service by the float bridge obviously was much poorer than via the belt. You have six or seven roads trying to use one float bridge during a day and you can well imagine trying to make a schedule where everybody would get their morning traffic into Hoboken in the morning and the traffic out of Hoboken on the night train. It just couldn't be done whereas it can be done, but isn't done unfortunately, on the belt.

Q. May I ask, did you have in contemplation the possibility that the portion of Hoboken's operation, other than the service and serving of Seatrain, might be turned or sold, or otherwise turned over to the Trunk Lines for handling?

A. Our position was this: We had no interest in running Hoboken as a railroad in any sense of the word. If Hoboken's operations then or now could be combined with one of the trunk line's operations so that they were cheaper and better, I was prepared to turn the Hoboken over to the trunk lines, or any trunk line, under an arrangement for their operation so long as we could cheapen the cost and improve the service, and that was the reason for this study, to see whether any reduction in the cost could come about due to [fol. 444] either joint operation or trunk line operations, and you will see from the report that they also took all the lighterage freight which had been diverted and they put back on the railroad and by putting it back, of course, they obviously reduced the costs on the railroad.

Mr. McCollester: You mean they didn't physically put it back but they figured as though it were back.

The Witness: They have continued to divert their traffic away from the Hoboken and thereby increasing Hoboken's unit costs. The records are quite interesting. I didn't put them in but if you would like me to, I will show you what happened after Seatrain took over Hoboken.

By Mr. Eshelman:

Q. At that time, was it your viewpoint that if some arrangement were made for the turning over of the Hoboken to any of these other lines, or all of them, that the Seatrain operation should be retained and not be turned over, that is the Hoboken's operations so far as the Seatrain business was concerned, should not be turned over to them?

A. There was only stipulation that I would not turn over that operation until the Trunk Lines could assure Seatrain of protection from just the sort of thing that you fellows have done since then to Seatrain, refused to put in through rates, refused to issue through bills of lading, hold up your cars and God knows what. I said at that time once that [fol. 445] got straightened out, we are not interested in running that railroad at all, for Seatrain or for anybody else, and we bought it, as I have testified, for protection and by gosh, was the wisest thing the Pennsylvania ever advised us to do.

Examiner Hoy: Off the record.

(Discussion off the record.)

(Witness temporarily excused.)

A. E. Kriesien was sworn and testified as follows:

Direct examination.

By Mr. Pierson:

Q. What is your name?

A. A. E. Kriesien.

Q. What is your business?

A. I am superintendent of terminals for the Erie Railroad, Jersey City.

Q. How long have you held that position?

A. Since February of this year.

Q. And before that time what position did you hold?

A. Approximately four years as trainmaster and seven months as inspector of transportation on the system.

Q. When you acted as trainmaster, in what territory was that?

A. About a year and a half in the terminal, two years on the Wyoming and Jefferson Division, five or six months on the Marion Division.

Q. Do you have charge of the railroad operations in the Jersey City terminal area for the Erie?

[fol. 446] A. I do.

Q. Have you prepared a four page mimeographed statement of cars received from and delivered to the Hoboken Manufacturers Railroad Company during the years 1936 and 1937 and the first nine months of 1938?

A. Yes, sir.

Mr. Pierson: I ask that this be marked exhibit Number 31.

Examiner Hoy: It will be marked exhibit 31 for identification.

(Exhibit 31, Witness Kriesien, marked for identification.)

By Mr. Pierson:

Q. What is the source of the figures contained in the exhibit.

A. The source is the agent at our Weehawken territory who maintains the records and they were summarized in my office.

Q. Are those records kept in the ordinary course of railroad business?

A. Yes, sir.

Q. And the records prepared by the agent in Weehawken are sent to you, are they?

A. That's right.

Q. And exhibit No. 31 represents, does it, a summarization of these records on file in your office?

A. That's right.

[fol. 447] Mr. Pierson: I offer the exhibit in evidence.

Examiner Hoy: If there is no objection, the exhibit will be received.

(Exhibit No. 31, Witness Kriesien, received in evidence).

By Mr. Pierson:

Q. I place before you, Mr. Kriesien, complainant's exhibit No. 1, showing the location and extent of the Hoboken Manufacturers Railroad. Are you generally familiar with that property?

A. I am.

Q. Before we get into that, Mr. Pierson, I think I ought to ask you one or two further question about your exhibit No. 31. Were all of those cars contained or rather listed in exhibit 31 Erie cars or were they cars that were received by Erie from other carriers?

A. It includes everything, our own cars, and from other roads.

Q. Would that include the Central Railroad of New Jersey?

A. Yes sir.

Q. New York Central?

A. Yes sir.

Q. Pennsylvania, Lehigh Valley and D. L. and W. Railroads?

A. Yes sir.

Q. Has there been any change in the situation during recent months with respect to the interchange of cars with some of the railroads?

A. Why, yes. Some time in August we discontinued receiving cars from the D. L. and W. for movement through [fol. 448] our yard to the Hoboken road.

Q. Do you know the reason for that?

A. Well, there was a float bridge constructed by the D. L. and W. in Hoboken and the cars were being handled through that route instead of through our yard.

Q. Well, that D. L. and W. float bridge operation you mentioned would have, in effect, for the month of September, 1938 only, and the tendency would be to reduce the number of cars handled in interchange service by the Erie?

A. That's right.

Q. Witness Mathey's exhibit No. 4 in this proceeding cites a rate of $1.05 per car, received by the Erie for service between West Shore connection at Weekawken and Hoboken Manufacturers Railroad. Will you please describe in detail the operating service rendered under this $1.05 charge?

A. Well, that charge covers the work we perform in switching and classifying these cars as between Hoboken

road and other points in our yard and then the delivery to the Hoboken Manufacturers' yard. It also covers a movement in the reverse direction where we pull the cars from the interchange with the Hoboken road to our yard, and then the classification of these cars as to their various destinations.

Q. Let's take, for specific illustration, the car received from the West Shore destined to the Hoboken Manufacturers Railroad. What do you do with respect to that [fol. 449] particular car?

A. Well, that car would usually be picked with other cars coming to us.

Q. You mean some other roads?

A. No, from the West Shore.

Q. Oh. The West Shore would tender you cars that had some from the Central Railroad of New Jersey and other railroads?

A. The Central Railroad of New Jersey is handled a little bit differently. It would cover cars from the Pennsylvania and Lehigh Valley and West Shore. They are usually delivered to us in one group.

Q. Then, what do you do?

A. Then, we would have to switch our cars for the Hoboken road out of that group and then handle the balance of the cars as they were destined.

Q. Now, what would be the approximate length of the haul from the interchange with the West Shore to the interchange with the Hoboken Manufacturers Railroad?

A. Well, it is relatively short. I would say 500 feet.

Mr. McCollester: Off the record.

(Discussion off the record).

By Mr. Pierson:

Q. Now, Mr. Brush has testified in this case that the interchange between the Erie and the Hoboken Manufacturers Railroad is along the easterly line of Park Avenue. [fol. 450] Is that correct?

A. That's correct.

Q. Now, you perform, as I understand it, a classification and a haul of approximately 500 feet?

A. That's right.

Q. For this rate of $1.05?

A. That's right.

Q. Now, does the situation differ in any material way in the reverse direction on cars from the Manufacturers Railroad to the Erie?

A. No, the cars are shoved in the yard up in the vicinity of our yard by the Hoboken road and then we pull them into our yard and perform the classification similar to the one performed in the opposite direction.

Q. That is the ordinary practice of the receiving line to classify the cars?

A. Yes, it is.

Q. In fact——

A. It is almost universal.

Q. Mr. Brush testified yesterday that the Seatrain vessels ordinarily dock about nine A. M. on a Tuesday morning and that they will sail about five P. M. on Wednesday, the following day. These vessels, according to his testimony, hold 100 cars so that during the interval from nine A. M. on Tuesday until five P. M. on Wednesday there are 100 cars taken out of the vessel and 100 cars placed in the [fol. 451] vessel, or 200 cars handled in approximately 32 hours, assuming the operation is continuous. Now, based on your experience as an operating man, would you say that handling 200 cars during the period of 32 hours between the car cradle shown on this map and the classification yard of the Hoboken along Park Avenue, was conducive to relatively cheap switching costs?

A. I would say yes.

Q. Now, what is your reason for making that answer? What is the basis for your conclusion in that respect?

A. Well, if it was a 32 hour period, approximately 200 cars handled, it would be better than six cars handled per engine hour, which, in my opinion, from my experience in some of our own terminals, is pretty good car per engine hour basis.

Q. Well, can you specify it with a little more degree of particularity. Just what terminal are you referring to and the number of cars you have in mind?

A. Well, in my Jersey City terminal we handle about six cars per engine hour, whereas in our Weehawken and Little Ferry terminal it runs 3½ to 4 cars per engine hour.

Q. Now, of course, it is obvious, without asking a question, that if the Seatrain operation did not continue during the night, a smaller number of hours was included, that the performance would be still better?

A. That's correct.

[fol. 452] Q. How would this operation covering the 200 cars in a short space of time in a restricted area compare with the movement of one car to a point down on the Hoboken at a team track or industrial siding?

A. Well, an operation where you can handle larger numbers of cars at one time, or in one vicinity, is much more economical than making a move of single cars which would involve the same period of time.

Q. What is the important factor or element affecting the cost of switching?

A. Cars handled per engine hour, the greater number of cars handled per engine hour, the cheaper the operating costs.

Q. Well, is it a proper deduction that the car unit, rather than the weight of the car, is the predominating controlling factor?

A. Well, the weight of the car in yard service has no bearing whatsoever on it. It is the number of cars in yard switching, that is the predominating factor.

Q. Well, for example, would it, in your opinion, cost as much to take an empty car from the Erie interchange with the Hoboken down to, for example Fifth Street, as it would a loaded car?

A. Absolutely.

Q. In other words, you would have the same engine hours, including the wages and full consumption?

[fol. 453] A. That's right.

Q. In your experience, have you found that the interchange service is usually less expensive than a delivery or origin service of freight?

A. It is.

Mr. Pierson: Off the record.

(Discussion off the record).

Mr. Pierson: I have nothing further.

Examiner Hoy: Cross examine.

Cross-examination.

By Mr. McCollester:

Q. Mr. Kriesien, I understand you have been superintendent of terminals here in the New York terminal area only since February of this year?

A. That's right.

Q. You said that in your—was it 14 or 40 years experience as a trainmaster?

A. About four years.

Q. I got down 40, and looking at you I couldn't believe it, so I compromised on 14. In your four years as train master, you said you had been a year and a half in the terminal area. When was that?

A. That was a year and a half before October 15 of last year.

Q. Now, wit' respect to the cars listed in your exhibit number 31, i there any difference in the operations performed by the Erie in interchanging those cars with the Hoboken whether those cars, some of them, may be going [fol. 454] to or coming from, the Holland American Line pier or Pan Atlantic piers or Seatrain piers?

A. No.

Q. And the same is true, is it not, with respect to the operations that you described in handling cars between the West Shore interchange and the Hoboken interchange? There is no difference in those operations, whether they contain freight destined to, or has come from, the Holland American Line, the Pan Atlantic or Seatrain?

A. No, that's right.

Q. And there is no difference in your operations, whether those cars are going to local industries on the Hoboken, where the Hoboken is obliged to unload the cars for the industries?

A. No difference.

Q. With respect to the operations that you have described in connection with cars coming from the Hoboken, isn't it a fair statement that the classification which you have referred to as performed by Erie consists simply in cutting out the Erie cars and then delivering the rest of the cars to the West Shore?

A. Not entirely, no, that isn't correct.

Q. Don't you expect the West Shore to do any—does the receiving line in the case of cars that you deliver to it, [fol. 455] follow the universal practice of the further classification of those cars?

A. Anything going to them, yes sir.

Q. Now, with respect to your opinion testimony regarding switching costs. Have you made any switching cost studies yourself?

A. I have.

Q. In what areas?

A. Every area that I have worked in.

Q. Now, in the New York terminal area, or Jersey City, or Weehawken, you have referred to the fact that in your Jersey City yard you handle about six cars per engine hour?

A. That's right.

Q. What have you determined as your engine hour costs?

A. That varies.

Q. Well, what—haven't you an average figure in mind?

A. I don't know quite what you mean by "engine hour cost."

Q. Well, you spoke about handling six cars per engine hour and that if you handled more cars per engine hour that would be conducive to relatively cheaper switching costs. Now, what I want to know is what you consider a fair engine hour cost for switching operations.

A. I am not prepared to say because that varies.

Q. Varies, I see. What elements of cost vary with the number of engine hours in switching service?

[fol. 456] A. Type of power, is a factor, heavier, lighter.

Q. That doesn't vary with the engine hours, does it?

A. Not for that particular engine, no.

Q. Let me ask the question this way: When you undertake to determine engine hour costs, are not the factors considered the wages of the crew?

A. That's right.

Q. Fuel, lubrication and water?

A. Right.

Q. Interest on the investment in the locomotive?

A. Right.

Q. Maintenance of the locomotive?

A. Yes.

Q. What other items?

A. You covered most of them.

Q. So that those engine hour figures—oh, yes, I should include depreciation. You would include that, of your locomotive?

A. Oh, yes.

Q. So that those items do not include anything for the right of way, the investment in property, return on investment in real property or tracks, overhead, traffic expenses, general expenses or any expenses of that sort?

A. Well, part of your overhead would be included.

Q. What part of the overhead would you include as vary-
[fol. 457] ing with engine hours in switching service?

A. Supervision, yard master, train master, superintendent, clerk, switch tenders.

Q. How do you allocate those on an engine hour basis?

A. The total naturally is thrown into the entire operating costs and is pro-rated. If we handle six cars per engine hour, you have a certain proportion for each car handled. If we handle twelve cars per engine hour, the overhead is reduced to that proportion.

Q. Wouldn't you rather pro-rate those on the basis of the total cars handled rather than upon the basis of engine hours?

A. You get the same results.

Q. But those are figures that go on just the same whether you handle on a particular day six cars per engine hour or two cars per engine hour, don't they?

A. That's right.

Q. So that really if you attempt to apportion them, it is an arbitrary apportionment and you could get as appropriately apportion them on a car basis, could you not?

A. That's right.

Q. Well, now, confining yourself to the particular items that we agreed on before, namely, crews' wages, fuel, lubrication and water, maintenance and depreciation of equipment and return on investment in equipment. Have you figured what those items are per engine hour in the Jersey
[fol. 458] City or Weehawken yards of the Erie?

A. I have figured them, but I don't have them in my mind.

Q. You don't know what they are?

A. I don't know what they are just this minute.

Q. Do you rent locomotives from time to time to the Hoboken Manufacturers Railroad?

A. Occasionally.

Q. And is that on a time basis?

A. It is on a daily basis, if I am not mistaken.

Q. And in figuring that daily basis, you take into account, I assume, the elements of expense that we have just talked about?

A. There is a standard practice established for the rental of locomotives to another road.

Q. Do you know what the rate is that you charge the Hoboken Manufacturers Railroad?

A. No. It is about a year ago since we had one, I guess.

Q. Now, you do not mean to suggest, I assume, that in describing the operations of the Erie for which the charge of $1.05 a car, shown on exhibit 4, is made, you do not mean to suggest that that charge is predicated upon Erie's costs, do you?

A. No.

Q. Have you figured the Erie's costs of performing the operations that you have just described?

[fol. 459] A. No, I haven't. I don't know that.

Q. Do you know whether or not it is a fact that that charge is a charge fixed by a contract made long ago between the Erie Railroad and the Hoboken Land and Improvement Company?

A. I don't know whether it was made with the Hoboken Land and Improvement Company but I know it was made a long time ago.

Q. And there is a contract that limits the charge, regardless of the cost of the operation?

A. I don't know about a contract but——

Q. Did you say you don't know whether there is a contract or not?

A. I don't know.

Q. That's all I have.

Thank you very much.

Mr. Pierson: I have just one or two questions on redirect.

Redirect examination.

By Mr. Pierson:

Q. These various elements that you have mentioned, such as water, wages, fuel, lubricants and so forth are what you include in the direct out of pocket expenses. In other

words, engine hours costs are based upon all these factors mentioned by Mr. McCollester, excluding taxes, and return on property values?

A. That's right.

[foll. 460] Q. Now, Mr. McCollester asked you about the classification the Erie made on traffic from the Hoboken Manufacturers Railroad to the West Shore and your answer indicated that this was more involved than a mere segregation of the Erie cars from all other cars. What do you have in mind?

A. Well, we have cars that segregate for the Erie for movement to further points on the Erie. We might have cars in that cut for Weehawken; we have cars for the C. N. J. which are handled separate from the West Shore and then there would be cars for the West Shore.

Q. You would have separate classifications for Erie and separate classifications for the West Shore and Central Railroad of New Jersey?

A. That's right.

Q. That's all I have.

Thank you, Mr. Kriesien.

Examiner Hoy: You are excused, Mr. Kriesien.

(Witness excused.)

Mr. Pierson: I will call Mr. Frauson.

O. A. Frauson was sworn and testified as follows:

Direct examination.

By Mr. Pierson:

Q. What is your position with the trustee of the Erie Railroad Company?

A. Superintendent of lighterage.

[fol. 461] Q. How long have you held that position?

A. Approximately nine years.

Q. And about how many years of railroad experience did you have prior to that time?

A. 19.

Q. Where are your headquarters?

A. Produce Exchange Building.

Q. In connection with the performance of your duties, have you become familiar with lighterage matters and packages in and around New York Harbor?

A. Generally, yes sir.

Q. That would be particularly so, I assume, on the Jersey side?

A. All sides.

Q. Do you know of any situations where freight in open top cars is placed along side vessels and delivered direct from the open top car to the vessel by means of the ship's tackle and do you also know of any situation where freight is unloaded by a steamship company direct from the vessel into an empty open top car where the freight is moving under lighterage free rates?

A. Yes.

Q. Where?

A. Particularly railroad terminals on the New Jersey shore.

Q. Can you be a little more specific?

[fol. 462] A. In our own particular case, at the Weehawken terminal. That is in the case of Erie.

Q. Now, can you mention one or two commodities that are handled in that manner?

A. Machinery, cylinders—not an awful lot. I mean there are not an awful lot of commodities to pick from. Machinery and cylinders, possibly bulk ore.

Q. Are those commodities you mentioned—do they move under lighterage free rates, generally speaking?

A. Generally speaking, yes.

Q. Well, now, when freight is delivered direct from a car to the steamship or from the steamship to the open top car by means of a ship's tackle, is the railroad company, or does the railroad company assume any stevedoring or lighterage costs of any kind?

A. No sir.

Q. That's all.

Cross-examination.

By Mr. McCollester:

Q. Do you handle any boxed automobiles in that way?

A. They may have been handled, I can't recollect any now.

Q. Would you be prepared to say that no allowance is made for steamship companies on boxed automobiles?

A. If they were handled in that manner?

Q. Yes.

[fol. 463] A. Yes.

Q. There would be no allowance?

A. There would be no allowance.

Q. And there would be no allowance in the case of any of these other commodities?

A. That's true, no allowance for loading or unloading.

Q. What would there be an allowance for?

A. I have in mind something entirely different. Under some provision a steamer that is docked one place in the Harbor that comes into a railroad terminal is subject, under the tariff of certain shifting allowances.

Q. At the Erie piers at Weehawken, is there any loading pier on these piers, cranes?

A. Yes, sir.

Q. Are those used in handling freight interchanged with vessels docking there?

A. In very rare instances.

Q. Very rare instances. When they are used, is that at the expense of the railroad?

A. It is not.

Q. Is there a charge made?

A. Yes, sir.

Q. Charge made to whom?

A. It is not directly under me, but it would be either against the steamship line or the stevedore.

[fol. 464] Q. Is the stevedore employed by the railroad?

A. No, sir.

Q. Do you charge vessels using your Weehawken piers dockage or wharfage?

A. In some instances they have been charged.

Q. It is not the general practice, is it?

A. I think that there is a tariff provision that there is a certain charge against freight under certain conditions but aside from that, no.

Q. Now, with respect to freight that is unloaded from cars *on* put on lighters for movement to shipside in New York Harbor. Is it not a fact that with respect to such freight the railroad makes a payment to the stevedore employed by the steamship company, or to the steamship company for moving the freight, theoretically for moving the freight from where it may be on the lighter to the foot of the ship sling?

Mr. Pierson: Will you read that question?

(Whereupon the reporter read the last question.)

A. No, the railroad does not make a payment to the steamship stevedore or to the steamship line. The railroad makes a payment neither to the steamship nor to the stevedore for such services.

By Mr. McCollester:

Q. How long has that been discontinued?

A. To my knowledge it never started.

Q. Did they—they make a payment to somebody, don't they?

[fol. 465] A. They do.

Q. To whom, then?

A. To the railroad's stevedore contractor.

Q. Do you know whether he does not employ the same men who are employed by the ship's stevedore?

A. I know that he does in some instances.

Q. And therefore he pays to the ship stevedore?

A. It is an assumption on my part.

Q. That is the case, with respect to freight interchanged by the Erie with the Dollar Line, for example, is it not?

A. Are you still talking about lighterage freight?

Q. Well, first I want to talk lighterage freight, yes. You handle freight by lighter to the Dollar Line?

A. Yes, sir. The same practice would prevail in connection with that delivery as it would to any other export steamship line in the Harbor.

Q. Now, where the freight is not handled by lighter to the Dollar Line, what stevedores do the work of unloading the cars?

Mr. Eshelman: May I hear the question please?

(Whereupon the reporter read the last question.)

Mr. Eshelman: Where is that?

Mr. McCollester: Dollar Line pier.

Mr. Eshelman: When it is not lightered?

Mr. McCollester: Yes.

[fol. 466] The Witness: On lighterage free freight the payment is made to the Dollar Line stevedores. I am talking now strictly to freight out of cars.

By Mr. McCollester:

Q. That's right. Payment is made to the Dollar Line stevedores?

A. Yes, sir.

Q. And you say that——

A. Pardon me. I think that is made direct to the Dollar Steamship Company. The Dollar Line stevedores are used and the payment made direct to the Dollar Line.

Q. Now, supposing you had a car of machinery, or a car of boxed automobiles, I assume that that freight might be unloaded from the car to the pier and then later picked up from the pier to the ship, might it not?

A. It might, but that would be a very unusual movement.

Q. If you did that, you would pay the Dollar Line for the unloading, would you not?

A. Assuming——

Q. Lighterage free?

A. Lighterage free, yes, sir.

Q. And you mean to say that where they take it directly from the car, you don't pay the Dollar Line the same amount?

A. I don't quite get that.

(Whereupon the reporter read the last question.)

Examiner Hoy: By saying "they", take it directly from [fol. 467] the car, you mean——

Mr. McCollester: Without being placed on the pier first.

The Witness: Such an operation would not be possible. The tracks are inside the pier.

By Mr. McCollester:

Q. That is a bad example, the Dollar Line pier. Now, are you familiar with the Berstein Line arrangement?

A. Partly.

Q. In that case, the automobiles move in a direct operation from car to hold of ship, do they not, without storage on the pier, as a general rule?

A. From what I have seen of them, that is not the case.

Q. In the case of the Dollar Line, supposing the freight should be unloaded from the car, but shouldn't be placed on the deck of the pier but moved direct by truck right through the side port of the ship, would you pay the Dollar Line?

A. It is a little deep for me.

Mr. McCollester: Read the question.

(Whereupon the reporter read the last question.)

A. I can't visualize any such operation at all.

By Mr. McCollester:

Q. Isn't freight handled that way in the case of the Dollar Line, to a considerable extent?

A. Dollar Line freight that doesn't go into their pier would be unloaded or held at Weehawken and moved down in lighterage service.

[fol. 468] Q. Yes, but I am talking about freight, Mr. Frauson, that goes into their pier. They have ships with side ports, don't they?

A. They do, but very little freight is handled through the side ports.

Q. Supposing freight is handled through the side ports and is taken from the car, put onto a truck and wheeled right through the side port without touching the floor of the pier, would you pay them the allowance?

Mr. Pierson: I object to the allowance because he stated that it does not occur.

Mr. McCollester: He said very little.

The Witness: I could enlarge on that. The only things that I have ever seen moved through the side port have been movements of silver from China, or something of that sort. They may have other movements but I can't recall them at the minute.

Mr. Pierson: I object because there is no factual basis on which to predicate that basis.

Examiner Hoy: Well, there was up to this last explanation.

Mr. Pierson: If he wants to stick to the question of Chinese silver.

Examiner Hoy: That has been added. Before he asked [fol. 469] the question, before that the witness said there was very little freight handled through the side port and then the question followed that had reference to the very little.

Mr. Pierson: I submit there are no facts for the hypothetical question. It is improper.

Examiner Hoy: I think there was in the witness' testimony a factual basis for it. Now, I think the only basis for a similar question is Chinese silver.

By Mr. McCollester:

Q. Isn't it a fact that your contract with the Dollar Lines calls on you to make the payment to them on all freight delivered from cars on their piers, no matter how they may see fit to handle that freight? If it is lighterage free freight?

A. Yes, that is correct.

Q. That's all.

Mr. Pierson: Off the record.

(Discussion off the record.)

Examiner Hoy: Any redirect?

Redirect Examination

By Mr. Eshelman:

Q. Mr. Frauson, when you testified there was a payment by the Erie to the Dollar Line on lighterage free freight, that is freight which was entitled to lighterage free but which was not lightered but was handled out of the cars to piers; for what was that allowance made, was it unloading from the cars, was it loading onto the ship or what [fol. 470] was it for?

A. Unloading of the cars.

Q. I just wanted that to be plain. And the mere fact that the same stevedore might perform the one service on behalf of the Erie, so to speak, and another service of loading the ship on behalf of the ship is simply a matter of the way it was handled for convenience?

A. That is true.

Q. That's all I have.

Recross Examination

By Mr. McCollester:

Q. Your statement that the payment would be made on all freight taken out of cars handled—moving under lighterage free rates would be equally applicable to freight coming in by the Dollar Line and loaded into cars, would it not?

A. It would.

Q. The obligation is on the Erie to pay the Dollar Line no matter how the Dollar Line handles that freight between ship and car?

Mr. Eshelman: May I ask if counsel doesn't want his counsel to read there that the obligation is the carrier's obligation under the tariff to load or unload, as the case may be, in the extent the tariff requires it. The obligation is not to pay the Dollar Line or to pay any particular stevedores, it could have its own stevedores—let me strike that. [fol. 471] Is not the carriers' obligation with respect to loading or unloading freight entitled to lighterage free service in New York defined by the tariff?

The Witness: It is.

Mr. Eshelman: And as so defined, it is the obligation to pay the Dollar Line, or any particular set of stevedores to do that work?

Mr. McCollester: Well, the tariffs speak for themselves on that.

Mr. Eshelman: Well, then, won't you admit this thing?

Examiner Hoy: The tariff speaks for itself there.

Mr. Eshelman: I don't want this record to seem to say that there is an obligation to pay the Dollar Line for loading or unloading this thing.

Examiner Hoy: Well, as I understand it, right now the record is clear. At least the Examiner is clear and that the obligation is on the carrier to load and unload and in performing this obligation they hire somebody to do it for them and pay them an amount of money.

Mr. Eshelman: That suits me.

Examiner Hoy: I don't think the complainant's are questioning that at all.

Mr. Eshelman: That is what it seemed to me.

Mr. McCollester: No, no. I think opposing counsel will agree with me that the obligation is not only to load and unload the cars but to place the freight within reach of [fol. 472] ship's tackle.

Mr. Eshelman: I think that is true.

Examiner Hoy: If there is nothing further the witness is excused.

(Witness excused.)

Examiner Hoy: Let's have a five minute recess.

(Whereupon a short recess was taken.)

After Recess

E. A. Hodkinson was recalled, and having been previously sworn, testified further as follows:

Direct examination.

By Mr. Pierson:

Q. I believe, Mr. Hodkinson, the last time you appeared, you were the complainant's witness, were you not?

A. Yes sir.

Q. And this time you are appearing on behalf of the defendants' side?

A. That's correct.

Q. Your official position with the Trunk Lines is commerce statistician and Chairman of the Divisions Committee, is it not?

A. Chairman of the Trunk Line Divisions Committee and Commerce Statistician.

Q. About how many years have you had in the aggregate?

A. Over 25 years.

[fol. 473] Q. Do you have a number of exhibits for introduction in this case?

A. I have.

Q. What is your first exhibit?

A. First exhibit, No. 32, is the report of the Interstate Commerce Commission in valuation docket No. 1201, Hoboken Manufacturers Railroad Company, et al. That's 476, 47 valuation report, number B-947. That shows the valuations fixed by the Commission for the Hoboken Manufacturers and other interests as of December 31, 1933.

The next exhibit No. 33, shows the final valuation of the Hoboken Manufacturers Railroad as fixed by the Commission, in exhibit 32, and also the net change due to additions and betterments, less retirements. There is very little difference between the financial valuation less retirements to December 31, 1937 from the final value as fixed by the Commission as of December 31, 1933. The next exhibit, No. 34, identified in the bottom right hand corner as Pro 1106, is a statement showing tax rates and assessments.

On the top of the exhibit is shown the tax rates for second class property, December, 1936 and 1937 and the main stem

for the same years. These figures were taken from the State Tax Department records at Trenton, New Jersey.

Mr. McCollester: May I just ask with reference to exhibit 34 if this is an exact copy of the records of the Tax Depart-[fol. 474] ment? In other words, if the descriptive matter and words used on this exhibit are taken from the State Tax Department records or if there is anything interpolated here by the witness.

The Witness: Nothing interpolated. This is an extract from the Tax Department's records.

Examiner Hoy: Proceed, Mr. Pierson.

Mr. Pierson: Have you finished your statement with regard to docket 35?

The Witness: I haven't started to introduce 35 yet. 35 is an extract from Poor's 1938 Railroad Manual, pages 221 and 222, consists of four pages. You will notice in connection with this exhibit that the officers of the Seatrain Lines, Incorporated and those of the Hoboken Manufacturers Railroad are practically identical. Poor's Manual, I might state at this point, is recognized as an authoritative source of statistics regarding railroads.

Mr. McCollester: Mr. Examiner, I don't know what the purpose of exhibit 35 is. It may be if the purpose is told us we can agree either to the exhibit or to the facts, but certainly Poor's Manual is not admissible as proof of any of the facts set forth in exhibit 35.

Examiner Hoy: Off the record.

(Discussion off the record.)

Mr. Pierson: Mr. Examiner, at this time I wish to with-[fol. 475] draw our offer of exhibit No. 35.

Examiner Hoy: What is the understanding?

Mr. Pierson: With the understanding that complainants will later, during the hearing, furnish for the record a statement, or information as to the officers and directors of Seatrains, Incorporated, and Hoboken Manufacturers Railroad Company.

Off the record.

(Discussion off the record.)

Mr. McCollester: We will furnish that.

The Witness: Off the record, Mr. Examiner.

(Discussion off the record.)

The Witness: Exhibit 35 is an exhibit showing the loaded and empty car movement, Hoboken Manufacturers Railroad for years 1936 and 1937. These figures are taken from the annual reports of the Hoboken Manufacturers Railroad to the Interstate Commerce Commission and are the figures shown on page 509 of those annual reports for those respective years.

Exhibit 36 has a pro number 1109 at the right hand bottom corner of the exhibit. The exhibit shows the history of allowances to Hoboken Manufacturers Railroad on carload traffic not loaded or unloaded by carrier or at its expense. I have started with the earliest allowance, which was prior to July 1st, 1918, at 20 cents a ton. Shown under notes 1, 2, 3, 4, 5 and 6, are the reasons for the various [fol. 476] changes. Right under note 6, I will draw attention that the 66 cents allowance is an increase of 230 percent over the original 20 cent allowance. The 63 cent allowance is an increase of 215 percent over the original 20 cent allowance. I have shown underneath that had the Hoboken Manufacturers Railroad allowance been increased in accordance with the general rate increases and reductions, its allowance—the present allowance would be 42 cents on traffic that was increased 10 percent under Ex Parte 123 and 40 cents under a 5 percent increase if the 33⅓ percent increase had been kept in tact, the 10 percent allowance the 10 percent increase under Ex Parte 123 would have made the allowance 40 cents and under the 5 percent increase the allowance would have become 38 cents. It shows the practices of increases at the bottom of the exhibit.

At the last hearing a point was made as to the separation in lighterage free and non-lighterage free freight. The proposal of the Hoboken Manufacturers Railroad is that on non-lighterage freight, without regard to the 123 reduction, that the Hoboken allowance should be 60 cents per ton and on lighterage free freight, still without regard to Ex Parte 123 increase, the Hoboken allowance should be $1.35 a ton. During the comparative and short time between the original hearing and this re-opened hearing, it wasn't possible to check out meticulously the rate from all the points [fol. 477] of origin or all of the points of destination which were involved in connection with the six months traffic study of Seatrain traffic interchange with trunk line carriers. We, therefore, took the broad, general assumption that all

traffic a hundred miles or over would be entitled to free lighterage and traffic originating or destined to points within a hundred miles, or less than a hundred miles would be non-lighterage free. Of course, there are exceptions on both sides there. When we came to our hundred miles, we found that at some of the points the rates on the traffic from or two some of those points would carry with them free lighterage. Likewise, some of the commodities originating or destined to points over a hundred miles from Hoboken would not be entitled to free lighterage because of their nature.

That would be applied to tank car traffic, as an illustration.

I have shown on page 3 of exhibit No. 37 the total tons and the average weight per car in pounds, the average weight in tons. The Hoboken Manufacturers' revenue based on an allowance of 60 cents a ton and $1.35 a ton. Their average revenue per car on the traffic covered by this exhibit, on a 60 cents a ton basis would be $14.40; on the $1.35 per ton claimed by them, it would be $32.40.

The question also arose as to the necessity of showing just how the allowances would be affected as a result of the [fol. 478] Ex Parte 123 increase. Here again we have shown in red pencil at the side of each commodity that was given a 5 percent increase, a check mark and at the foot of page 3 we have made the summarization showing what the Hoboken's allowance would be based on 63 cents a ton for the 5 percent increase under 123, and for the 10 percent increase under Ex Parte 123.

Exhibit 38 covering the carload movement via Seatrain lines to destinations less than 100 miles from Weehawken. As I say when we picked these points out, it was upon the assumption that all points within a hundred miles would not be entitled to free lighterage, but when we went into the proposition further, we found that quite a number of those shipments were entitled to free lighterage. Consequently, pages 1 to 4 of this exhibit cover the shipments not entitled to free lighterage. Here again I have shown the per car allowance to the Hoboken Manufacturers Railroad based on 60 cents a ton and also what their average per car revenue would be on 63 cents a ton, under 5 percent, and 66 cents per ton on the 10 per cent commodities, an average of the two. It being understood that when I refer to 5 percent

and 10 percent commodities, I am referring to commodities that were increased by that percentage under the Commission's decision in Ex Parte 123.

Page 6 of the exhibit deals with shipments entitled to [fol. 479] free lighterage. I showed the average revenue per car to the Hoboken Manufacturers Railroad on this freight under their proposal of $1.35 would be $41.80 a car. At 60 cents per ton it would be $18.60. That is a figure that does not appear on the statement. The average weight per car was 31 tons which, at 60 cents a ton, equals $18.60 per car.

I have also shown on this exhibit, in pencil, on page 6, the average per car revenue based on 63 cents, 5 percent increase, and 66 cents, 10 percent increase, under Ex Parte 123, the number of cars which moved and the number of cars with respect to increases of 5 and 10 percent.

Exhibit 39——

By Mr. Pierson:

Q. Your exhibit 38, which you have just been describing, is identified by the pro number 1103?

A. Yes, on page 6.

Examiner Hoy: Did you explain your red pencil marks?

The Witness: The red penciled marks made throughout these exhibits refer to the commodities which were given the 5 percent increase under Ex Parte 123.

Exhibit No. 39, pro number 1101, at the bottom right hand corner, is similar to exhibit 38, except that it covers southbound traffic originating at points over a hundred miles from New York. All the various averages that were shown in connection with exhibit 38 are also shown in connection [fol. 480] with exhibit 39.

The red penciled figures, of course, refers to the commodities given a 5 percent increase.

Exhibit 40 is similar too. That is pro number 1102, is similar to exhibit 38 except that it covers southbound movements. Here again we have included in the one exhibit shipments not entitled to free lighterage, and shipments entitled to free lighterage. The red penciled figures shown on this exhibit represent the 5 percent increase. I have shown various averages which are shown on exhibit 38.

Exhibit 41 is a summarization of exhibits 37, 38, 39 and 40. That's pro 1113. This exhibit is self explanatory.

Exhibit 42, pro 1104, shows the rate of return for the class 1 roads of the Eastern District for the calendar years ending December 31, 1932 up to and including the calendar year ending December 31, 1937.

Exhibit No. 43 consisting of two pages, pro number 1105, shows the rate of return for the New York Harbor carriers for the calendar years ending December 31, 1932 up to and including the calendar year ending December 31, 1937.

Mr. McCollester: May I just examine on exhibits 42 and 43? The rate of return in both those exhibits is, in every case, figured on investment rather than on the Commission's valuation, is it not?

The Witness: That's right.

[fol. 481] Exhibit No. 44 is in two parts. The upper part of the exhibit shows the net income, or deficit, after fixed charges for carriers in the eastern district, class I railways, calendar years 1932 to 1937. In the bot-om block I have shown the New York Harbor Lines for the same period.

Exhibit 45, pro number 1107, shows the net income, or deficit, after fixed charges, for the class I railroads in the eastern district for the seven months of 1938. The eastern district carriers as a whole shows a deficit of $85,103,008.00 Underneath that I have shown the New York Harbor lines. You will note that every one of them were in the red. I further wish to call attention to the fact that a number of those lines in bankruptcy: The Erie Railroad petition was filed January 18, 1938. That is Finance Docket 11915.

The New, York, Susquehanna and Western petition was filed January 1st, 1937, Finance Docket 11681.

In addition to these two roads the New Jersey and New York is in bankruptcy and so is the N. Y. O. and W., their petitions having been filed with the Commission.

By Mr. Pierson:

Q. The roads, namely, the Erie, New York, Susquehanna and Western, New Jersey and New York and New York, Ontario and Western, are undergoing reorganization proceedings under section 77 of the Bankruptcy Act and their petitions were filed *filed* on the dates mentioned by Mr. Hod[fol. 482]kinson in the Federal Courts. Now, coming to the top portion of the exhibit dealing with the eastern district carriers, as a whole of course, there are a number of roads that did have a net income after fixed charges. I think it

is fair to state the majority of those carriers are comparatively short line carriers dealing with coal particularly. That would be true of the Reading Company, for example, and Anthracite Company, the Montour Rail Carrier, the Wheeling and Lake Erie. The Bangor and Aroostock is up in the northern portion of Maine and is particularly an agricultural line dealing principally with potatoes. Some of the other lines, the Cambria and Indiana, Chicago and Illinois Midland, would be very unlikely to interchange traffic with Seatrain line or have traffic originate or terminate on those lines that could move by Seatrain.

Do you have one aditional exhibit, Mr. Hodkinson, to be marked exhibit No. 46?

A. Yes, sir. This is a copy of the interchange of correspondence between Mr. Pierson, attorney for the defendants here and Mr. Carter McCollester, attorney for the complainant.

Mr. McCollester: Mr. Hodkinson is hardly the person to identify these letters. I have no objection to them and will admit the authenticity of my letters and I received the letter from Mr. Pierson such as is shown here.

The Witness: This interchange of correspondence shows the break down.

[fol. 483] Mr. McCollester: It speaks for itself.

The Witness: It speaks for itself. All right.

Mr. Pierson: Off the record.

(Discussion off the record.)

Examiner Hoy: We will adjourn until two o'clock.

(Whereupon a recess was taken until 2:00 o'clock p. m. of the same day).

Afternoon Session

Examiner Hoy: We will resume, gentlemen.

Mr. Pierson: I have no further questions of Mr. Hodkinson, and I now offer in evidence exhibits numbers 32 to 46, inclusive.

Examiner Hoy: Is there any objection?

Mr. McCollester: Wait just a minute, Mr. Examiner. I am somewhat in a quand-ry about exhibit 34, which is the tax exhibit, because that is so at varience with the Hoboken's tax bills and their notices of their assessed value that it

appears there must be something wrong. What is wrong, I can't say. Whether this is an incomplete transcription or is a transcription of something other than the tax itself, it is impossible to know at the moment. We have no objection, of course, to proof going in as to the tax rate and assessments of the Hoboken, but they ought to be the correct ones. I can't cross-examine Mr. Hodkinson any more on the subject. I think, because he has said he took them [fol. 484] from the records of the State at Trenton.

Examiner Hoy: Could not this exhibit be received with the understanding that it is subject to verification by both complainant and defendants? In other words, if there are any errors found by complainant or defendants they may supplement the record with the correct figures, we will say, within ten days after the close of the hearing, and, of course, if there are no corrections to be made, why so advise the Examiner, at least, and then we can use the exhibit.

Mr. McCollester: That's all right. May I on that just ask Mr. Hodkinson whether on any tax records that he examined, the statement appearing in the lower left hand corner, "Total not used in operation of Seatrain Company" appears, and if so, he can tell us just what tax records he saw such a statement on.

The Witness: Have the record clear to this. I did not personally prepare this exhibit. It was, however, based upon the record of the tax department. As a matter of fact, it is based upon a typewritten statement which was given us by the engineer for the Tax Department.

Now, as you said, Mr. McCollester, we will be very glad to cooperate with any representatives of your company to visit Trenton and have the corrected statement prepared if any corrections are necessary.

Mr. McCollester: Well, then, our objection to the exhibit. [fol. 485] Mr. Examiner, as having not been prepared by the witness, and being based upon statements by somebody that isn't here, rather than upon the tax rolls itself. It seems to me under those circumstances incompetent. I am willing to furnish for the record a statement of Hoboken's tax assessments and will submit it to opposing counsel for their check if they want it that way, but I think this exhibit ought to be excluded.

Examiner Hoy: I agree with you, Mr. McCollester.

Objection to exhibit 34 is sustained. Mr. McCollester has offered to furnish the information that is contained in the exhibit, and I would suggest that probably defendants could have a representative who could go down and examine the records with a representative of Seatrain—I mean representative of Hoboken.

Off the record.

(Discussion off the record.)

Mr. McCollester: Mr. Examiner, we have present, and have submitted to opposing counsel, the tax assessments for the years 1938, one for Hoboken Manufacturers' Railroad and the other to the landlord, Hoboken Warehouse and Steamship Connecting Company. We are prepared to furnish copies of the schedules for the record and to opposing counsel if that will be satisfactory.

Mr. Pierson: That will be very satisfactory to the de-[fol. 486] fendants, and with that understanding we have no objection to the elimination of exhibit No. 34.

Mr. Eshelman: When this is given, do you want that to take the place of the other, to preserve the continuity of the other?

Examiner Hoy: It will be understood then that complainant will furnish copy of the tax schedules. Will you do that within how long?

Mr. McCollester: Ten days.

Examiner Hoy: Within ten days after the close of the hearing.

Is there any objection to any of the other exhibits?

Mr. McCollester: No objection.

Examiner Hoy: Exhibit 32 to 46 inclusive, except exhibit 34, will be accepted.

(Exhibits 32, 33, 35, to 46 inclusive, Witness Hodkinson, received in evidence.)

Mr. Pierson: Mr. McCollester, I have no cross examination.

Examiner Hoy: You are excused.

(Witness excused.)

Mr. Pierson: Mr. Examiner, that completes the defendants' presentation.

Examiner Hoy: That completes it?

Mr. Pierson: Yes, sir.

[fol. 487] Examiner Hoy: Have you got some more cross-examination of Mr. Brush?

Mr. Pierson: Yes, sir.

Examiner Hoy: Will you resume the stand, Mr. Brush?

GRAHAM M. BRUSH, was recalled, and having been previously sworn, testified further as follows:

Cross-examination.

By Mr. Eshelman:

Q. Mr. Brush, if your counsel will permit you to identify a letter which he wrote——

Mr. McCollester: I have been furnished, Mr. Examiner, by Mr. Eshelman, with a copy of a letter dated October 16, 1938, addressed to Mr. Healy, which I wrote to Mr. Healy in response to a request by him for certain information. To the letter are attached some statements which accompanied my letter.

Off the record.

(Discussion off the record.)

Mr. McCollester: Subject to check with the original, I will stipulate that I wrote such a letter and forwarded the statements to Mr. Healy, and that the information quoted in the letter was furnished to me by Mr. Brush and that the statements were made up by the Hoboken Manufacturers Railroad.

Mr. Eshelman: Mr. Examiner, I might state that in con-[fol. 488] nection with Mr. Brush's original testimony there were portions of it which dealt with certain loadings or reloadings of freight at Hoboken which were interchanged between Seatrain and Trunk Line and it was—as part of the cross examination incident to that testimony, that this information was asked, and therefore with this identification I should like to have this received as exhibit 47.

Examiner Hoy: The exhibit will be received as Exhibit No. 47.

(Exhibit #47, Witness Brush, received in evidence.)

By Mr. Eshelman:

Q. Mr. Brush, what arrangements did Seatrain make with respect to refrigerator cars—strike that question please.

What is the principal movement of perishable freight so far as Seatrain Lines are concerned? Is it from Cuba or from the southwest or from both?

A. Primarily from Cuba. Only a small volume moves up from New Orleans and a small volume south of Havana from New York. There is a large volume from New Orleans to Havana.

Q. And in what ownership of refrigerator cars is that perishable handled?

A. Practically entirely in private refrigerator carline cars with whom Seatrain has contracts, namely, American Refrigerator Transit, Merchant's Dispatch and so forth.

Q. So far as perishable fruits and vegetables are con- [fol. 489] cerned, is that primarily in A. R. T. cars?

A. Most of those and other cars for whom we have contracts.

Q. And by the way, do you happen to know whether the A. R. T. is owned in part by the Missouri Pacific Line?

A. Yes, I understand so.

Q. And the other part by Wabash?

A. That is my understanding.

Q. And is practically all of the movement in A. R. T. between the southwest or between New Orleans or Belle Chasse and Havana between A. R. R. cars? I take it that M. D. T. cars are not involved?

A. The majority of the traffic—perishable traffic moving from New Orleans to Havana moves in A. R. T. cars. Some, however, does move in M. D. T. cars working their way back to New York.

Q. And as between Cuba and New York, is the movement there in A. R. T. cars with the exception of what there is of the M. D. T.'s?

A. Not entirely, no, but primarily to clear up the situation I would say that we use two or three A. R. T.'s as against all others.

Q. And the "all others" would be the M. D. T.'s——

A. M. D. T.'s and U. R. T.'s and F. G. E.'s.

Examiner Hoy: Just a minute. I want to have this record clear. Show what M. D. T. means. It doesn't mean

[fol. 490] much on reading the record as such, M. D. T., so let's call them by the names of the company instead of the initials. M. D. T. means Merchants Dispatch?

The Witness: Merchants Dispatch; which is owned by the New York Central Railroad.

By Mr. Eshelman:

Q. And the F. G. E. is Fruit Growers Express?

A. The F. G. E. is Fruit Growers Express, which, I understand is owned by the Pennsylvania Railroad.

Q. If you will accept my word for it, while we have an interest we don't claim by any means a complete interest in it. It is owned, is it not, by a group of eastern and southern lines?

Mr. McCollester: Whatever you say on that.

Mr. Eshelman: All right.

By Mr. Eshelman:

Q. I don't know whether you have mentioned it but exhibit 47 also refers to B. R. E., which would be Burlington Refrigerator Express?

A. That is correct.

Q. And W. R. E., which is Western—W. F. E., I believe it is, Western Fruit Express.

A. That's my understanding.

Q. And the lat-er is a Great Northern owned company, is that correct?

A. That, I don't know.

Q. Is it operated by the fruit growing people along with the Burlington cars?

[fol. 491] A. There must be some hook-up because we get orders from fruit growers on W. F. E. cars.

Q. You have no contract, I take it, with the Fruit Growers Express in view of what you said, as to use of cars either of the Fruit Growers Express ownership or the Burlington or Western Fruit Express cars?

A. That is correct.

Q. In what direction is your perishable movement?

A. Are you speaking now of Hoboken?

Q. Yes.

A. Northbound to Hoboken.

Mr. McCollester: Mr. Examiner, I don't quite see the relevancy of this.

Mr. Eshelman: I think I will start hooking it up right away.

Mr. McCollester: Examine.

By Mr. Eshelman:

Q. In connection with that movement, do you have in excess empty refrigerator cars of A. R. T. ownership which accumulate in the New York area?

A. I don't think so, for this reason: Maybe I will have to change my testimony to this extent, that I had overlooked the movement of several commodities such as potatoes that move under ventilation. My testimony was given thinking of perishables that move under refrigeration. Every A. R. T. car which we bring up to New York, we must return un- [fol. 492] less it goes to an interior point and the Trunk Line carrier loads it away from Hoboken. In most instances, the Trunk Line carriers return those cars to Hoboken. Occasionally, the A. R. T. Company calls upon Hoboken to turn back for loading some of the cars which Hoboken is holding empty, to return south. And upon occasion when they have done that we have had to call upon the Trunk Line to return A. R. T. cars to us, or upon the M. D. T. company to furnish cars.

Q. Will you look at the last page of this exhibit 47 and note among the first general group of eastbound cars, about the last five items, notice for instance the Burlington car 76424, cranberries from Plymouth, Mass. for New Orleans. That was loaded into an A. R. T. car, was it not?

A. That's right.

Q. And similarly the next items of cranberries were unloaded from a Fruit Growers Express car and loaded into an A. R. T. car?

A. Yes.

Q. And so on with the other cars?

A. The next one is into a M. D. T. car.

Q. Wasn't the reason for unloading the Burlington Fruit Growers and Western Fruit Refrigerators to get the freight into an A. R. T. car that otherwise would have to go empty southbound?

A. No, definitely no. We handle very, very few A. R. T. [fol. 493] cars empty. I don't believe you will find one voyage a year where there are empty A. R. T. cars on our ships.

Q. Wouldn't this be the explanation of that?

A. No. I have explained it in a letter that I wrote to Mr. McCollester.

Q. Why did you take them out of those refrigerators and put them into other refrigerators?

A. We received, Seatrain, from the Hoboken and others, received notice from the Fruit Growers Express, Western Fruit Express and the Burlington Refrigerator Express, over the signature of Mr. Roth of the Fruit Growers Express that Hoboken must not deliver cars of those initials to Seatrain.

Q. What is it that Mr. Roth has that we don't have that you abide by his request more than ours?

A. If you will let me go on I will explain. We took the matter up with Mr. Roth and asked him what he would expect if one of his cars came to Hoboken an hour before sailing loaded with a perishable, in the middle of winter, whether he would expect Hoboken not to deliver that car not to Seatrain or whether he would expect Seatrain not to take that car. His reply was, "If you take it, I want you to pay me about three or more times as much for the use of that car as you pay anybody else, such as the Merchants Dispatch." I told him that we would do no such thing for the reason that he had contracts with the Trunk Line carriers for the use of his cars and that unless he instructed [fol. 494] them not to load those cars via Seatrain, we were going to take them whenever it was necessary to take them, in order to give proper transportation service, and we would unload them when it was convenient to unload them and transfer them and we would charge the cost of the delivering to the Trunk Line carrier as they had obviously violated the instructions of the F. G. E., W. F. E., and B. R. E., when they spotted a car for a shipper to load perishables via the Hoboken and Seatrain, and he refused to do it.

Q. If there were a word "no penalty payment" involved in the case of such equipment, would you let it go through?

A. No, definitely not.

Q. Why not, may I ask?

A. For the simple reason that we feel that the F. G. E. and these other lines instructing us and not compelling you, are just playing dirty ball.

Q. Maybe I didn't make myself understood. I mean to say, suppose there was no restriction in the case of the

F. G. E. or W. F. E. or B. R. E. cars, no restriction against your taking them so far as their consent were concerned, would you have taken them?

A. Absolutely. All the other car lines with whom we do not have contracts, we do not transfer their cars. Isn't that [fol. 495] a good answer? The only cars we transfer are the fellows who are playing horse about this thing.

Q. I only wanted the truth.

A. I am glad the records of the Commission will show what has been going on.

Q. Are these the only cases—the cases where refrigerator cars are involved that there was a transfer owing to the instructions of the owners not to use them in that service?

A. That is correct. We never transfer cars where the lines have instructed Hoboken or Seatrain nor to take their cars. We have always transferred, if it is possible to do so, as a good transportation matter. In other words, if a car arrives a day or so ahead of time, and the weather is proper, and the car can be transferred, we always transfer it. I had a car only Wednesday that was—it was F. G. E. car, loaded by your company, to meet the Wednesday shipment. I was called and asked whether if that car, which could only arrive at the last minute and was routed Seatrain, whether I would take it otherwise if it had to be transferred at the last minute. It was loaded in such a way that the shipper did not want it transferred. He said he would route it Florida, East Coast; I said, "You take the car". That is just another gag. I don't know whether the car arrived in time to make the sailing or not. We took the car and we will continue to take the cars.

[fol. 496] Q. What you testified to now, I think related to refrigerated cars.

A. That was an F. G. E. car loaded by the Pennsylvania Railroad.

Q. I wasn't talking about that. I was talking about your testimony of the last four or five minutes. What you said did that relate entirely to refrigerator cars? You weren't talking about box cars?

A. No, no. I am talking about private line cars of these three ownerships.

Q. I so understood you but I wasn't sure the record was clear. Now, except in the case of refrigerator car traffic, are there other instances, or are there any other traffic, are there other instances where you have made a transfer

merely because the owners of the cars had given instructions that the cars were not to go into Seatrain service?

A. None.

Q. On this last group of items, on the last sheet of this exhibit, I notice New York Central car number 93790 appears in both columns. Am I correct in understanding from this that apparently there was an eastbound load of flour from Buffalo which came to Hoboken in New York Central car 93790, that that load was unloaded from that car and put into the T. and P. car 40280, whereupon the New York Central car, thereby made empty, was loaded with the lading which was in D. and H. car 17700?

[fol. 497] A. That is what I suppose took place.

Q. Now, why do you say that operation occurred?

A. As I testified to previously, shippers request that—most flour shippers request that their flour be unloaded.

Q. Is that in the nature of a transit service or a service that is given the shipper on that type of cargo?

A. No. Mr. Eshelman, I think you made it quite plain, the railroad's tariff obligation for the railroad to unload cars with lighterage free freight. When a shipper requests it to be unloaded, we do it.

Q. I take it when interchange is necessary, when a shipper requests it, just as you put in the record this morning, there is the obligation right there in the tariffs. Now, when a shipper asks the Hoboken to carry out its tariff provisions, Hoboken does it, it unloads the car. I don't see how we could carry out our tariff provisions if we didn't unload the car. But when we bill you people for unloading, you don't pay it.

Q. The point I am asking about now, take for instance this first car that moved on September 11, Delaware, Lackawanna and Western car 45451, it was transferred into a Santa Fe car. Was that flour moving to Cuba under a true export bill of lading?

A. Well, if you are carrying out the orders of the Commission it was.

[fol. 498] Q. Well, I take it we are.

A. You ought to know that better than I. I can only assume, of course, that it did move under a true export bill of lading.

Q. In that case was there any necessity of unloading that car so far as the mere interchange of the traffic was concerned?

A. Mr. Eshelman, the tariff provides on flour from Buffalo that the railroad will unload the flour.

Q. That's on flour from Buffalo, we will say, moving under a billing to Hoboken.

A. Any rate on flour from Buffalo moving export or coastwise, provides that the railroads will unload the car no matter what kind of a bill of lading is used.

Mr. McCollester: Isn't that, after all, what a true export bill of lading is, to the port and one beyond?

By Mr. Eshelman:

Q. Will you look at the fourth page of this document. I see there a car of candy from Cuba to Bloomfield, New Jersey. Do you know what is the explanation of that movement? Isn't this a rather unusual movement to expect a shipment of candy from Cuba to Bloomfield?

A. No, we have handled quite a bit of candy recently. A new movement developed by Seatrain.

Q. Does that originate at Havana?

A. Yes, I think the factory is in Havana or just outside of [fol. 499] Havana-Cardenas.

Q. Do you know whether any other cars have gone to Bloomfield?

A. That, I don't know, but we are getting more and more candy.

Q. I notice this also was in a Pennsylvania Railroad car.

A. That is what my record shows here.

Q. Do you know whether candy is manufactured at Bloomfield?

A. That, I don't know.

Q. Do you know whether there is a movement of candy from Bloomfield to Cuba?

A. That, I don't know.

Q. Do you know whether, by any chance, that was a car that had previously moved south from Bloomfield to Cuba and was rejected and was on the way back?

A. That may be true. There was nevertheless quite a movement of candy from Cuba to the United States via Seatrain.

Q. Do you know whether or not that weighing may have been necessitated or may have been desired by Seatrain in order to determine responsibility for any loss or damage claims or anything of that sort?

A. No, I don't know the circumstances of that car as to why it was transferred?

Mr. McCollester: It says "Weighing and sampling by U. S. Customs."

[fol. 500] The Witness: What I mean by that, Mr. Eshelman asked me whether Seatrain had anything to do with it. I don't know whether Seatrain had anything to do with it. I can maybe clarify the situation by saying, to me it seems to me it makes no difference whether Seatrain had anything to do with it or not. The obligation is there in your tariffs, the Hoboken's tariff, to load the car. Whether Seatrain requested it or not, it seems to me immaterial. If Seatrain requested it, it was either as agent or at the request of the shipper or consignee.

By Mr. Eshelman:

Q. Looking at page 3 of this document, dealing with westbound cars, I note there cars illustrated of tomatoes and pineapple. To what extent were those cars unloaded?

A. That depends on the various Governmental inspectors. It is buried from time to time.

Q. Would you say that five to ten percent would be a fair average?

A. For the tomatoes and pineapples, yes.

Examiner Hoy: Five or ten per cent of what?

The Witness: Of the load of the car.

Examiner Hoy: Was unloaded?

The Witness: Unloaded, or loaded.

By Mr. Eshelman:

Q. Would you think it would be fair, even if otherwise it were a matter for the Trunk Lines to bear, that there should [fol. 501] be a charge against the Trunk Line of 75 cents per ton of the entire lading in that car merely because five or ten per cent of the cases came out?

A. Hoboken has never double charged you on that.

Q. You are not asking it here?

A. No, we are not asking a double charge. We are just showing what you told us all along, that you were willing, when stuff was handled, to pay for the handling, and when stuff was handled, you didn't pay for the handling. That is all the purpose of my testimony was for. We charge you

for every pound of freight on every occasion on lighterage free and we expect to be paid for it for the same reasons that I have testified, whether it is handled or not.

Q. Maybe I misunderstood you. All right.

On the Sisal, what was the real occasion, or what is the particular necessity for unloading those cars?

A. Government inspection.

Q. That's not what the letter says.

Mr. McCollester: Look at the very bottom of the page, "On instructions from the shippers, these cars were to be weighed by public weighers, before being forwarded by rail".

The Witness: Off the record.

(Discussion off the record.)

The Witness: I should like to correct my statement that this was for Government inspection. It was for the purpose [fol. 502] of getting a public weigher's weight.

Mr. McCollester: At the request of the shipper?

The Witness: At the request of the shipper.

Examiner Hoy: Public weigher's weight certificate at the request of the shipper?

The Witness: Yes, a public weigher's weight certificate at the request of the shipper.

By Mr. Eshelman:

Q. Will you look at the next sheet of the exhibit, and particularly at those items which relate to sugar, which apparently according to the statement, were unloaded because of miscellaneous orders from shippers. Is there any consolidation—strike that question.

Is all sugar shipped in the same form? That is to say, is it all bulk or bags or all cartons or in what form is it shipped?

A. Various forms. Some sugar is shipped in cartons, some in bags of various sizes and various characters. That is speaking of refined sugar. Raw sugar ffom Cuba is only handled in one package, 350 pound bags.

Q. Is there any consolidation of shipments at Havana or in Cuba prior to movement by Seatrain?

A. Not at our terminal.

Q. I meant, for instance, might there be five cars of sugar originatinng in various points in Cuba, which, when

they would go on Seatrain, the vessel would be consolidated [fol. 503] so as to consolidate shipments of two cars, we will say, into one or three cars into two?

A. No, not to my knowledge.

Q. Not so far as you are concerned?

A. No.

Q. Now, to what extent is there a distribution process practiced? We will say at New York in the sugar business?

A. Well, I take it you are speaking now of refined sugar?

Q. Yes.

A. Because this happens to be refined sugar.

Q. Yes.

A. The sugar refineries in Cuba ship to New York in these various packages. It comes up either Seatrain, Ward Line or some other carrier. When the sugar gets to New York they then make up their mind how much is going to be trucked away to local points in this territory, in the metropolitan area, or trucked beyond or sent out by rail. Let's assume that that was Hershey sugar, and the Hershey Sugar Corporation got an order from somebody in Buffalo to send him a car of refined sugar made up of 150 10-pound bags, 250 25-pound bags and so forth and so on and no matter which steamship line it came in on, Hershey Sugar Corporation would instruct that a car be made up in accordance with their sales order, and it would be so shipped out.

Q. As a matter of fact, is it the situation to an im- [fol. 504] portant extent that perhaps sugar is sold to dealers who prefer to take it in a variety of packages rather than a solid car of a particular single kind?

A. I would say that for the majority of the sugar we handle is not so split. In other words, here is only 160 cartons where we handle many hundreds.

Q. I really meant from New York westbound?

A. No, I don't think that is correct, Mr. Eshelman.

Q. For instance, would it be the case that sugar coming into New York would, say from Hershey or any place down there, that there would be orders perhaps from a receiver in Syracuse or Albany, wherever it might be, to say "Send me a car made up of several different kinds of packages?"

A. Yes, that's what happens, but I wouldn't say—but I would say that that is not the case in the majority of instances.

Q. I see. Now,——

A. I think I would know because after all Seatrain has got to unload those cars, you understand, and pay for the unloading.

Q. Now, take for instance, this car, B. and O. 265474, which apparently came out of car B. and O. 265474 and P. R. R. 563274. I take it that what happened there was a consolidation whereby the sugar that was in the Pennsylvania Railroad car was loaded into the B. and O. car with the load that was already there. Is that correct?

[fol. 505] A. That is correct. But that B. and O. car, in turn, may have had half the bags taken out of it for local delivery. We may have had to unload that car in part for local delivery, leaving a half a car from which we got orders to unload P. R. R. 563274, which we did, and then told Hoboken to load it, which Hoboken did.

Q. I see. I see now this descriptive matter just above saying that "This sugar was received from Seatrain in cars loaded from 800 to 1200 bags per car consigned to various sugar brokers."

Now, these cars that are illustrated below are cars of from 400 to 500 to 600 bags indicating that there was some removal of sugar, or some rearrangement of the contents or redistribution, is that correct?

A. That is my understanding.

Q. Is your understanding that the trade requires that, is that so?

A. That is correct. In other words, as I stated it would be no different if the sugar came up Ward Line, they would go to the dock and get the sugar they want for local deliveries and order the rest sent by rail. The railroads would load the cars. Hoboken loads those cars without question.

Q. On this raw sugar, what is the explanation there?

A. That raw sugar is due to custom's inspection, weighing and sampling. On that, if you will note, that every [fol. 506] single bag must be unloaded by Seatrain for weighing by the Government and, if ordered out by rail, then Hoboken, under its tariff, loads those cars and they go out by rail.

Q. May I ask as to what was the difference between the 12 cars and the 36 cars? Were those both of raw sugar? I notice there are two divisions there on that sheet. Raw

sugar, you say, 100 per cent in sampling and 36 cars of sugar, 10 per cent weighed and sampled. What is the reason for that distinction?

A. The reason, the Hershey Refinery in Cuba, I believe it is the only refinery where there are U. S. Customs inspectors, all other refineries in Cuba ship to the United States their refined sugar, and that must go through the customs at the port of entry. Therefore, I take it that these cars were cars from refineries other than Hershey because there was weighing and sampling.

Q. The difference between the 36 cars and the 12 cars is that the 36 cars, on which only 10 per cent was weighed and sampled, was refined sugar?

A. That's correct.

Q. And the 12 cars are raw sugar which has to be weighed in their entirety?

A. That is correct.

Q. To what extent is the United States Customs Inspec- [fol. 507] tion maintained in Cuba that would apply to northbound traffic?

A. The Hershey is the only one where the Government maintains its staff.

Q. Is there any similar staff so far as perishables are concerned?

A. Not in Cuba.

Q. Referring again to the fourth page of this exhibit and to the instances under the heading of, "Sugar—18 cars, miscellaneous orders from shippers," will you explain that please? Do you have cases of consolidation of northbound freight or of southbound freight—let me rephrase that one too. Do you have cases of consolidation of southbound freight? You say from two cars into one or from three cars into two, where the shipment is going to the same consignee at the same destination?

A. Occasionally.

Q. And in that case do you necessarily stand on specific orders of the consignee or do you reserve the right to consolidate in a case of that sort?

A. You are speaking now of Seatrain?

Q. Yes.

A. It is our practice, I believe universally, to always consolidate where possible when a shipper requests it. Occasionally there may be some other reason for consolidation in which case, if the shipper did not know

[fol. 508] about it, we would take it up with the shipper or the consignee. I will say this, that if a case should arise where a shipper or consignee couldn't be reached, I would feel that it was Seatrain's privilege, as it would for any other ship, to order the cars unloaded and then to pick the cargo up and load it into any car which can properly move in accordance with the car service rules via Seatrain ships. Do you understand? Of course, in such a case Seatrain is acting for the shipper or the consignee.

Q. I am not certain I understand that about including the Wheeling and Lake Erie car 71547 and Union Pacific car 176166, mentioned on the last page. I note the letter states on page 2, "With respect to cars W. & L. E. 71547 and U. P. 176166, containing steel and paper respectively, our records do not indicate clearly the reason for transfer, but we assume, because of many other experiences, that these cars were unloaded to consolidate with shipments in cars N. Y. C. 300560 and G. N. 39391 respectively." Do you know whether the shipments out of the Wheeling and Lake Erie and Union Pacific cars were from the same consignor, or the same consignee?

A. No. Mr. Eshelman.

Q. Is the New York Central and Great Northern cars respectively—as I have stated in this record, our records didn't indicate the reasons for this transfer but I have since found the reason for the transfer of the Wheeling [fol. 509] and Lake Erie. The reason for that transfer,—I have since found out that the Union Pacific—the reason for the transfer of the Union Pacific car 176166 was because it was a bad order car, and could not be forwarded via Seatrain.

Q. Did you get any further information on the Wheeling and Lake Erie car?

A. No. I think it would be better to leave the record just blank as to the reasons for that transfer. I can only make an assumption.

Q. I think that's all I have.

Examiner Hoy: Any further cross-examination of the witness?

Mr. Healy: Except in connection with Mr. Brush's testimony to the application to the Trunk Lines with respect to loading and unloading freight handled by the Hoboken, I think that the record ought to contain a reference, or have

an exhibit showing the rules under which traffic is handled to and from the stations on the Hoboken. I have in mind particularly rule 235-A, number 90 of the West Shore Railroad tariff, I. C. C. WS No. 6902.

Off the record.

(Discussion off the record.)

Examiner Hoy: It will be understood, then, that Mr. Healy, within ten days, will file the exhibit containing rule 235-A—pertinent rules in the tariff of each of the [fol. 510] Trunk Lines serving New York with respect to obligations to handle freight moving via Hoboken Manufacturers Railroad to and from points served by the Trunk Line and that Mr. McCollester also, within ten days, will furnish an exhibit showing similar rules of the Hoboken Manufacturers Railroad.

Mr. Eshelman: In connection with that, will Mr. McCollester make reference to the rule or item or provision in the Trunk Line tariffs which provide that they are found by the Hoboken's tariff provisions?

Examiner Hoy: Well, now, that is principally a matter of construction of the tariffs.

Mr. Eshelman: It was my understanding that the purpose of the offer of this tariff was to deal with the extent of the Trunk Line obligation. Now, I understand it would depend upon what he has stated in the Trunk Line's tariff as to the extent, if at all, that they would cover or incorporate in themselves what their might be in a Hoboken tariff.

Examiner Hoy: The offer is to furnish an exhibit showing certain—copying certain rules in certain tariffs, that's all.

Mr. Mathey: The fact of the matter is that rule which Mr. Healy has given reference to is not the complete rule.

I also ask that Mr. Healy supply the rules which are shown in all of their rate tariffs, the so-called omnibus rules which makes reference to the rates which would be [fol. 511] governed by the individual publications.

Mr. Healy: Of the connecting lines.

Mr. McCollester: Mr. Examiner, I think you undoubtedly understand what Exhibit 47 in the examination of the witness in reference thereto is about, but I think unless there be confusion on the record it should be stated, as I

understand it, that this doesn't have to do with what the decisions of the Hoboken should be. During the course of his examination, Mr. Brush made the remark that under the basis of divisions claimed by the Trunk Line to be now in effect under which they undertake to pay the Hoboken $1.35 where the freight is unloaded from the car, that they are refusing to pay—make that payment where freight actually is loaded or unloaded and this information shown on exhibit 47, as I understand it, was requested by Mr. Healy as illustrative of that statement by Mr. Brush so that it all goes to the question of whether Mr. Brush was correct in saying that the Trunk Lines didn't live up to what they claim is the existing agreement for divisions, it doesn't go to what are reasonable divisions for the future.

Mr. Healy: He wants to be sure we are correct in not paying the bills.

Examiner Hoy: It is understood then, that these exhibits will be furnished as to copies of what the tariffs contain as to those rules and regulations within ten days. Is there any further questioning of the witnesses?

[fol. 512] Mr. McCollester: I have some questions.

Examiner Hoy: I mean cross-examination.

Any further cross-examination of this witness?

Redirect, Mr. McCollester.

Redirect examination.

By Mr. McCollester:

Q. Mr. Brush, will you first state the officers and directors of Hoboken Manufacturers Railroad and of Seatrain Lines, Inc., respectively?

Mr. Pierson: As of what date?

Mr. McCollester: As of the present time.

The Witness: The officers of the Hoboken Manufacturers Railroad Company are as follows: Graham M. Brush, president; George S. Amory, first vice president and treasurer; Joseph Hodgson, Second Vice President; W. J. Mathey, third vice president; E. K. Morse, fourth vice president; George H. Hobbs, secretary; J. B. Cossilini, general auditor; A. R. McGowan, general superintendent.

The directors are: George S. Amory, Graham M. Brush, Walter L. Conwell, E. K. Morse, Joseph Hodgson, C. D.

Mallory, New York, George H. Hobbs, Hoboken, New Jersey.

The officers of Seatrain Lines, Incorporated, are: Graham M. Brush, president; Joseph Hodgson, first vice president; E. K. Morse, vice president and secretary; G. S. Amory, vice president and treasurer; Claude DeVeze, assistant secretary.

[fol. 513] The directors of Seatrain are: Graham M. Brush, J. L. Lancaster, C. E. Perkins, C. D. Mallory, John G. Pew, Joseph Hodgson, G. S. Amory, W. L. Conwell, E. K. Morse, Robert Moore, Jr., H. T. Dickinson, E. M. Ward

Q. Mr. Brush, in answering some questions with reference to exhibit No. 7, you were asked to separate the item of fixed charges which, in 1936, amounted to $54,729.60; between rent and interest, and you stated that of this amount $29,604.00 was rent and the balance was interest. Now, so that the record may be clear, I think you covered it on your direct, but I want to make doubly sure. Is that the only rent paid by the railroad, and if not, where is other rent found in the statement?

A. That is not all the rent paid by the railroad. The railroad pays rent as shown under miscellaneous rent which, as I previously testified, is a net figure, the miscellaneous rent being for the plots marked in red on the defendant's exhibit 29, a part of which you will recall is rented to Seatrain. Therefore, the figure is a net figure.

Q. Have you got there the statement of the total rent?

A. I have. The rental paid to the Hoboken Railroad Warehouse and Steamship Connecting Company and the Hoboken Land and Improvement Company for the year 1937 amounted to $48,805.75.

Mr McCollester: Mr. Examiner, may be have leave to furnish within ten days the actual real estate taxes paid for [fol. 514] the year 1937?

Examiner Hoy: By——

Mr. McCollester: Hoboken Manufacturers Railroad.

Examiner Hoy: Yes.

Mr. Pierson: Year, years?

Examiner Hoy: 1937.

Mr. McCollester: '37.

Examiner Hoy: You will furnish that within ten days?

Mr. McCollister: We will.

By Mr. McCollister:

Q. Mr. Brush, I think that if a comparison is made between Mr. Hodkinson's exhibit 35, showing the number of loaded and empty cars handled by the Hoboken Manufacturers Railroad and one other exhibit—I don't remember the number, showing the number of cars interchanged between the Hoboken and the Erie——

Mr. Pierson: The number of cars interchanged between the Erie and the Hoboken was witness Kriesien's exhibit No. 31 and Mr. Hodkinson's exhibit relating to the number of empty-loaded cars handled by the Hoboken was exhibit No. 35.

By Mr. McCollester:

Q. Comparisons made between the exhibit 35 to figures in exhibit 31 and the figures shown on exhibit 46, which was my letter to Mr. Pierson, there will be some discrepancy. Particular as between figures on exhibit 46 and the figures based on the annual reports of the Interstate Commerce Commission. Can you explain why that dis-
[fol. 515] crepancy has occurred?

A. In checking our records to prepare for this case, we have discovered a clerical error amounting to over 200 cars and also various cars which had been counted twice, which, for the purpose of this case, couldn't be counted twice. In other words, take a car that had, we will say, half a load put in down at Fifth Street and the balance put in at 14th Street, the Hoboken's records were kept in such a way to show that that was two cars where actually it was one and the same car.

So that we had to make a correction in the number of cars handled for the purpose of our cross study, exhibit 7.

Q. And the error is in the figures reported to the Interstate Commerce Commission, is that correct?

A. That's correct.

Q. And the correct figures are those on which exhibit 7 is based, which in turn are the figures shown on exhibit 46, is that right?

A. That is correct.

Q. Now, exhibit 36 of Witness Hodkinson gives the history of the allowances to the Hoboken Manufacturers Rail-

road on carload traffic not loaded or unloaded. Can you state what the financial experience of the Hoboken was under these old allowances?

[fol. 516] A. Yes, I can. The Hoboken Manufacturers Railroad up to the time—up to 1932, from records which we examined prior to the time we bought it, had been in the black only one year, namely 1929, that all in all other years it showed very substantial losses, particularly the first years. The reason for those losses was quite apparent when we examined the lease between the Hoboken Manufacturers Railroad and the Hoboken Railroad Warehouse and Connecting Company which obliged the Hoboken Manufacturers Railroad to maintain rates as shown in Mr. Hodkinson's exhibit. However, that clause in the lease, because of the failure to provide the railroad with sufficient revenue to meet its obligations had to be cancelled. It had not been in effect for some time.

Q. That led to the filing of the complaint and compromise adjustments that produced the 60 cent provision?

A. That is correct.

Q. Now, Mr. Brush, have you made a little further study of the suggestion which has been put forward here from time to time of basing—a study of Hoboken's cost upon some engine hour computation and if so, have you anything further to say on that point?

A. I have. I testified yesterday that the cost of engine hour operation on the Hoboken was only about $30,000.00 a year whereas our exhibit showing switching costs show that the expense for 1936, other than handling expenses [fol. 517] amounted to $229,478.50. And for 1937 to $254,557.52. Now, the question is how much would engine hour expenses affect those totals so that I have had prepared by our auditor the actual engine hour expenses for 1936 and I find that for 1936 the total expenses for all three engines was $26,777.75 and for 1937 $36,003.29, showinng that engine hour expenses are only slightly more than 10 per cent of the expenses of operating the Hoboken Manufacturers Railroad, other than handling expenses. Therefore, as I have said before, that for anyone to state, as has been stated here, that switching costs vary directly with engine hour costs, I think is an absurdity on the face of it.

Q. Will you just state on the record what you refer to as engine hour costs?

A. I refer to those costs which the witness for the defendants said this morning he took as his expenses which actually varied with engine hours, namely, the wages of a crew, switch tender, fuel, water, lubrication, various other locomotive supplies and locomotive repairs including compensation insurance, Social Security taxes on the labor and the like, and to apply an engine hour basis to the other expenses would be just an arbitrary apportionment on the basis of engine hours. That is my opinion and I think the witness agreed this morning.

Q. Anything further you want to say?

[fol. 518] A. Except that in considering this time study a little bit further, discussing it with our superintendent, he points out that our locomotives are handling probably the four different classes of freight almost every time they move so you would have a terrible time trying to split it down in finding out how much time it takes to handle each class of traffic. Even if it seemed desirable, which I think it is quite apparent now it is not necessary.

Q. Four different kinds of traffic being those we summarized on exhibit 46, I think it was.

Examiner Hoy: The four different kinds referred to on your direct examination?

The Witness: That's right.

Mr. McCollester: That's all, Mr. Examiner.

Examiner Hoy: Any recross examination of the witness?

Mr. Pierson: I have no question of Mr. Brush.

Mr. McCollester: Can we let Mr. Brush go?

Mr. Pierson: Yes.

(Witness excused.)

W. J. MATHEY was recalled and having been previously sworn testified further as follows:

Direct examination.

By Mr. McCollester:

Q. Mr. Mathey, when Mr. Hodkinson was on the stand he identified exhibits 37 to 41 inclusive, and taking 37 for ex-

[fol. 519] ample, which was a statement of shipments via Seatrain to destination a hundred miles or more from New York, Mr. Hodkinson gave this list as indicative of the-

shipments moving on lighterage free rates, but said that, of course, there was some of the commodities on which the rates were not published——

Q. Have you run through these exhibits, and will you state for the record, indicate for the record the commodities on which the rates are not lighterage free rates, and on which, therefore, under the basis contended for on the complaint here, its division would be 60 cents a ton rather than $1.35 a ton?

A. Well, on exhibit 37 the first item reading "Alcohol", those first five cars happened to be alcohol in tank cars. Tank cars are freight not being subject to free lighterage. Of course, we are not claiming that. The next item is carbon black which comprises the majority, I should say, of the cars shown on the entire statement. The carbon black is shipped in two ways, either in paper bags, which is prohibited from free lighterage, or it is shipped in the so-called dry flow tank cars, which is also prohibited from free lighterage. That is true in every one of these shipments of carbon black or carbon gas black, shown on the exhibit.

The next item, cooperage stock, is another item which is not lighterage free.

[fol. 520] Mr. Pierson: What page is that?

The Witness: First page on the bottom at the right hand side. A good part of the scrap copper was shipped in bulk, loose in the car, and is also not lighterage free. Similarly, the item on lumber; lumber is also a commodity——

Examiner Hoy: Where is that?

Mr. McCollester: Top of page 2.

The Witness: Some of that might have been in bales but a good part of it is not. Lumber is down on the list. Lumber is not lighterage free. The manganese in bulk is not lighterage free. The cottonseed foots—shown under oils, cottonseed foots, down at the bottom of the page; moves in tank cars. The chrome ores are also in bulk. The gasoline under the heading of "petroleum", the gasoline was in tank cars. The salt, all these shipments of salt shown on this statement was salt loaded in bulk, and consequently not lighterage free except where the weight of the individual lots exceed 50 tons.

Mr. Eshelman: May I understand the last part of that sentence:

The Witness: I said except when the total weight exceed 50 tons, then it is lighterage free.

Mr. Eshelman: That would be in every case.

Mr. McCollester: You got crushed rock, 50,000 pounds, which wouldn't be.

[fol. 521] Examiner Hoy: You have got two instances of one car of a hundred thousand pounds, that is exactly 50 tons.

The Witness: It is 50 tons or over.

Examiner Hoy: 50 tons or over?

The Witness: That's right. The syrup items under the heading molasses and the inverted syrups, those were all in tank cars with the exceptions of the shipments destined to Buffalo and East Buffalo. That's all on 37.

The next one is exhibit 39, which shows the southbound movements. All of the cars shown under the heading of acids happen to be tank cars.

By Mr. McCollester:

Q. And not lighterage free?

A. And not lighterage free. The fire brick shown on the top of the second column is fire brick, loose, which is also not lighterage free.

The plate glass over 120 inches, shown under the heading of "Glass", there are several items, over 120 inches is not lighterage free freight. As to the bottles, the glass bottles, in some cases the packages do not conform to the requirements for lighterage free freight. As to how much or how many of these cars involved in that, I don't know, but there may be some. In other words, that all depends upon the sort of container. On the third page, the item under the heading of "Lard"——

Q. Just a minute before you get away from the glass bottles. My information is that a substantial portion of [fol. 522] the glass bottle movements are glass bottles in bulk.

A. But I can't find in the lighterage tariffs that that is prohibited from free lighterage. That may be a mistake, but I can't find that it is. I had that in mind myself.

The item of loose lard, those are all tank cars of lard going to Havana. Again, the item of lumber—I will take that back, that is southbound. That is lighterage free, it is westbound.

All of the tank car freight is not lighterage free; practically all of the shipments under the heading of oils, were tank cars.

Q. They are not lighterage free?

A. They are not lighterage free.

Mr. Eshelman: Any exceptions so far as you know?

The Witness: What, on the oils?

Mr. Eshelman: Yes.

The Witness: Well, there are one or two I can't identify exactly. I don't recall. There may be one or two that were shipped in tanks.

Now, on the petroleum lubricating oil, there is one car of those I know was a tank car and not lighterage free, which is the first one. Under the heading of pottery, practically all of those cars were chinaware loaded loose in the cars in bulk and consequently not lighterage free. Now, on the [fol. 523] Next page, page 5 under the heading of "Slate", all of the items shown as crushed slate or slate dust is loaded in bulk and in the cars, and is not lighterage free. I think that is all that I can recognize from the statement.

Mr. McCollester: You may cross examine.

Examiner Hoy: Any cross examination?

Mr. Pierson: We have no questions.

Examiner Hoy: Any further witnesses, Mr. McCollester?

Mr. McCollester: That's all we have, Mr. Examiner.

(Witness excused.)

Examiner Hoy: Have you some more witnesses?

Mr. Pierson: We have no further witnesses, but in view of Mr. Mathey's testimony in correction of exhibit 37 and 39, we should like to revise exhibits 37 and 39 making such corrections as may be necessary in the light of Mr. Mathey's testimony, which we believe is substantially correct.

As Mr. Hodkinson testified this morning, the exhibit was submitted with the reservation that it was prepared without sufficient opportunity to make a check of each individual item. Now, in order that the record may be correct in every respect, we ask the privilege of submitting a revised exhibit for number 37 and also a revised exhibit for number 39 and that would also, of course, include the revised summary exhibit number 41. For that purpose, if permitted to file revised exhibits, we should like to have 15 days so that sufficient time will be afforded to make a very accurate check of the tariffs. In addition we have a number

[fol. 524]

of other cases pending so that I am restrained to ask for a little more than ten days.

Examiner Hoy: Well, I think it is perfectly proper that you should file corrected exhibits, but I think ten days is sufficient.

The other information that is being furnished here is all going to be furnished within ten days and I think you can furnish corrected exhibits within ten days. We have other information coming due to be furnished by various parties within ten days.

Mr. McCollester: Mr. Examiner—take this off the record.

(Discussion off the record).

Examiner Hoy: I think it would also be well that when the corrected exhibits are furnished that complainant furnish information covering the whole year of 1937 showing how the Seatrain traffic was divided in cars or tons, into two classes. First, those which would be entitled under complainant's contention to 60 cents per ton allowance, and, second, those that would be entitled to $1.35 a ton allowance.

[fols. 525-525a] (Discussion off the record).

Examiner Hoy: Is there anything further in this proceeding?

Mr. Pierson: Not on behalf of defendants.

Examiner Hoy: Briefs will be due December 1st.

The record is closed.

(Whereupon the hearing was closed.)

[fol. 526-526a] EXHIBIT NO. 2 WITNESS MATHEY

Statement of Allowances to Hoboken Manufacturers Railroad
(In cents per ton, except as noted)

	Prior to Ex Parte 123	Under Ex Parte 123 10%	Under Ex Parte 123 5%
Carloads loaded or unloaded by H. M. R. R. or at its expense	$1 35	$1 41	$1 38
Carloads loaded or unloaded by shipper or consignee or at their expense	60	66	63
Less than carload freight	$1 45	$1 60	$1 52
Automobiles (Per Car)	$8 00	$8 80	
Ice (Per Car)	$4 75	$5 23	
Silk (Per 100 pounds)	15	16½	

Authority for above allowances is Erie R. R. Terminal Tariff I. C. C. No. 19451, page 33, as to period prior to Ex Parte 123, and Trunk Line Association Proceedings Advice No. 41A of June 7, 1938, file N-3700-2, for present allowances.

[fol. 527] EXHIBIT No. 4 WITNESS MATHEY

Statement of Charges Assessed by Intermediate Lines to Reach Hoboken Manufacturers Railroad

	Prior to Ex Parte 123	Under Ex Parte 123
National Docks Ry.	15¢ per ton	15¢ per ton
New Jersey Junction Ry.	45¢ per ton	50¢ per ton
(West Shore R. R.)	(Minimum $5 per car)	(Minimum $5.50 per car)
Erie Railroad	*95¢ per car	*$1.05 per car
	+$12.50 per car	+$13.75 per car

* For service between West Shore connection at Weehawken, N. J., and H. M. R. R.

+ For service between DL&W connection at Jersey City, N. J., and H. M. R. R.

(Here follows 1 photolithograph, side folio 528)

EXHIBIT No. 5 WITNESS: MATHEY

STATEMENT OF ALLOWANCES TO VARIOUS NEW YORK HARBOR TERMINAL COMPANIES
In Cents Per 100 Pounds (except as Noted)
AND

① Brooklyn Eastern District Terminal
Bush Docks
① Jay Street Terminal
Harlem Transfer Company

BETWEEN	CARLOADS			LESS THAN CARLOADS			CORDWOOD		GRAIN		ICE	
	Prior to Ex Parte 123	Under Ex Parte 123		Prior to Ex Parte 123	Under Ex Parte 123		Prior to Ex Parte 123	Under Ex Parte 123	Prior to Ex Parte 123	Under Ex Parte 123	Prior to Ex Parte 123	Under Ex Parte 123
		10%	5%		10%	5%						
Territory A.	6¢	6.6¢	6.3¢	6¢	6.6¢	6.3¢	6¢	6.3¢	6¢	6.3¢	6¢	6.6¢
Territory B.	8¢	8.8¢	8.4¢	8¢	8.8¢	8.4¢	6¢	6.3¢	6¢	6.3¢	6¢	6.6¢
Territory C.	7¢	7.7¢	7.4¢	7¢	7.7¢	7.4¢	6¢	6.3¢	6¢	6.3¢	6¢	6.6¢
	*5¢	5.5¢	5.3¢	5¢	5.5¢	5.3¢	6¢	6.3¢	6¢	6.3¢	6¢	6.6¢
Territory D.	7.5¢	8.3¢	7.9¢	7.5¢	8.3¢	7.9¢	6¢	6.3¢	6¢	6.3¢	6¢	6.6¢
Territory E.	6.5¢	7.2¢	6.8¢	6.5¢	7.2¢	6.8¢	6¢	6.3¢	6¢	6.3¢	6¢	6.6¢
BUSH TERMINAL R.R.												
Territory F.	5.3¢	5.8¢	5.6¢	7.8¢	8.6¢	8.2¢	†$9.50	†$9.98	5.3¢	5.6¢	2.5¢	2.6¢
Territory G.	6.8¢	7.5¢	7.1¢	9.3¢	10.2¢	9.8¢	†$9.50	†$9.98	5.3¢	5.6¢	2.5¢	2.6¢
NEW YORK DOCK RAILWAY												
Territory F.	5.7¢	6.3¢	6.0¢	8.4¢	9.2¢	8.8¢	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . .
Territory G.	8.0¢	8.8¢	8.4¢	11.0¢	12.1¢	11.6¢	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . .

* Applies when traffic moves via Virginia or Maryland gateways.
① On Automobiles, Carloads, B.E.D.T., and Jay St. Terminal receive an additional allowance of $7.00 per Car.
† Applies Per Car.

Authority for Allowances Prior to Ex Parte 123 is D.L.& W.R.R., I.C.C. No. 23627.
Authority for Allowances since Ex Parte 123 is Trunk Line Ass'n Proceedings Advice No.41A of June 7, 1938, File N-3700-2.
Allowances Cover Carfloatage of Loads and return Empties from Rail Terminals and Switching. No per diem is paid to Car Owner by Contract Terminals, Rail Lines reimbursing Owner.

DESCRIPTION OF TERRITORIES

DESCRIPTION OF TERRITORIES

TERRITORY A.

1. All points in the United States on and within a line drawn from Eastport,Me.,via the United States-Canadian boundary to Lewiston,N.Y.;thence via N.Y.C.R.R. through Suspension Bridge,N.Y. to Buffalo,N.Y.;thence via the Shore of Lake Erie to Erie,Pa.;thence via P.R.R. to Union City,Pa.;thence via Erie R.R. to Oil City,Pa.;thence via P.R.R. to Foxburg,Pa.;thence via B.& O.R.R.through Butler,Pa.,Callery Jct.,Pa.;Sharpsburg, Pa.,and Allegheny,Pa.to Pittsburgh,Pa.; thence via P.R.R. to Wheeling,W.Va.;thence via B.& O.R.R.through Bellaire,O.,Bridgeport,O.,Martins Ferry,O.,Moundsville,W.Va.,Parkersburg,W.Va.,to Kenova,W.Va.;thence via N.& W.Ry.,east from Kenova,W.Va.,to Roanoke,Va.;thence via Virginian Ry.,to Norfolk,Va.;including that portion of Southern Ry.north of Danville,Va.,but excluding those portions of A.C.L.R.R.and S.A.L.Ry.,extending north of the southern boundary;thence via the shore of the Atlantic Ocean to Eastport,Me.

2. All points in Canada east of Kingston,Sharbot Lake, Renfrew,Pembroke (except stations on C.P.Ry. between Renfrew and Pembroke,Ont.), and Cochrane,Ont.

TERRITORY B.

1. All points in the United States west of a line drawn from Lewiston,N.Y.,to Kenova,W.Va.,as outlined in description of Territory A; thence on and north of main line of C.& O.Ry. from Kenova,W.Va.,to Cincinnati,O.; thence on and north of Ohio River (including Louisville,Owensboro,Henderson and Paducah,Ky.), to Cairo,Ill.; points on and east of west bank of Mississippi River to Dubuque,Iowa,inclusive,thence on and south of Illinois-Wisconsin state line to line of Ill.Cent. R.R.; thence on and east of Ill.Cent.R.R. to Dodgeville,Wis.; thence on and south of C.& N.W.Ry. to Madison,Wis.; thence on and south of C.M.St.P.& P.Ry. to Duplainville,Wis.; thence on and south of M.St.P.& S.S.M.Ry. to Milwaukee,Wis.,via Rugby Jct.,Wis.

2. Points on and east of C.& N.W.Ry.;from Milwaukee,Wis., to Manitowoc,Wis.,via Sheyboygan,Wis.;including Manistique, Mich.,and west bank of Lake Michigan ports.

3. All points in Southern peninsula of Michigan.

4. All points in Canada,Kingston,Sharbot Lake,Renfrew, Pembroke and Cochrane,Ont. and west thereof,to, but not including Port Arthur and Armstrong,Ont.

TERRITORY C.

All points south of the line of Virginian Ry. from Norfolk, Va.,to Roanoke,Va. (including those portions of the A.C.L.R.R. and S.A.L.Ry. extending north of the northern boundary,but excluding that portion of Southern Ry. north of Danville,Va.), thence south of main line of N.& W.Ry.,Roanoke,Va.,to Kenova, W.Va.; thence south of C.& O.Ry. to Cincinnati,O.; thence south of Ohio River (not including Louisville,Owensboro,Henderson and Paducah,Ky.) to Cairo,Ill.; thence east of the Mississippi River to New Orleans,La.,and the mouth of the Mississippi River and north of the Gulf of Mexico from the Mississippi River to the Atlantic Ocean.

TERRITORY D.

1. All points in the United States west of the western boundaries of Territories B and C; south of Lake Superior and of the international boundary line; north of the Gulf of Mexico and the Rio Grande,and on and east of a north and south line running as follows: Following the boundary line between the State of North Dakota and the State of Montana and the boundary line between the States of South Dakota and Wyoming and Nebraska and Wyoming to the line of the Union Pacific extending east from Cheyenne,Wyo.; then following the line of the Union Pacific westward to Cheyenne and from Cheyenne running southward through Denver,Colorado Springs,Pueblo and Trinidad,Colo.;then following the line of the Atchisen,Topeka & Santa Fe Railway through Raton and La Vegas,N.M.,to Albuquerque,N.M.;then south along the line of the Atchison,Topeka and Santa Fe Railway to El Paso, Tex.

2. All points in Canada,Port Arthur,Ont. and Armstrong,Ont., and west thereof to the boundary line between the Provinces of Manitoba and Saskatchewan.

3. All points in Mexico.

TERRITORY E.

1. All points in the United States west of the western boundary of Territory D.

2. All points in Canada west of the western boundary of Territory D.

TERRITORY F.

All points on or east of the western boundary of Trunk Lines as described in Note 1.

TERRITORY G.

All points west of the western boundary of Trunk Lines as described in Note 1.

NOTE 1.

WESTERN BOUNDARY OF TRUNK LINES

The western boundary line of the Trunk Lines will be as follows:

The New York Central Railroad from Lewiston,N.Y.,through Suspension Bridge,Niagara Falls,North Tonawanda and Black Rock to Buffalo,N.Y.; thence via the shore of Lake Erie to Erie,Pa.,thence via Pennsylvania Railroad through Union City,Pa.,thence via Erie Railroad to Oil City,Pa.; thence via Pennsylvania Railroad to Foxburg,Pa.; thence via Baltimore & Ohio Railroad through Butler, Callery Jct.,Sharpsburg and Allegheny to Pittsburgh,Pa.; thence via Pennsylvania Railroad to Wheeling,W.Va.; thence via the Baltimore & Ohio Railroad through Bellaire,O.,Bridgeport,O.,Martins Ferry,O.,Moundsville and Parkersburg,W.Va. to Kenova, W.Va.,inclusive.

4564

[fol. 529] EXHIBIT No. 6 WITNESS MATHEY

Switching Charges Assessed by Trunk Line Railroads

Erie R.R.

From	To	Rate per Car	Tariff Authority
DL&W connection at Croxton, N. J.	Industries at Jersey City	*$13 75	I.C.C. 19724
Erie Docks at Jersey City	Industries at Weehawken, N. J.	$17 60	I.C.C. 19724
Erie Team Tracks at Weehawken, N. J.	Erie Docks at Weehawken, N. J.	$17 60	I.C.C. 19638
H.M. or W.S. connection at Weehawken, N. J.	Private sidings at Weehawken, N. J.	$17 60	I.C.C. 19638
Erie Docks at Jersey City	Private sidings at Jersey City	$17 60	I.C.C. 19638
Erie Docks at Weehawken, N. J.	Private sidings or team tracks at Weehawken, N. J.	(1) 84	I.C.C. 19638

* Applies on Perishable Freight only.
(1) In cents per ton of 2,240 pounds.

Central R.R. of New Jersey

Connection with PRR at Flemington N. J.	Private sidings at Flemington, N. J.	* 69	I.C.C. G-4810
Connection with PRR at Freehold, N. J.	Private sidings at Freehold, N. J.	* 69	I.C.C. G-4810
Connection with L.V.R.R. or D&H R.R. at Wilkesbarre, Pa.	Private sidings at Wilkesbarre, Pa.	* 69	I.C.C. G-4810

* In cents per ton of 2,000 or 2,240 pounds as rated.

Delaware, Lackawanna & Western R.R.

Float Bridge at Hoboken, N. J.	Union Terminal Cold Storage Co., Jersey City	$13 75	I.C.C. 23795
N. Y. Lighterage Station, N. J.	Lackawanna Terminal Warehouse, Jersey City	(3) $10 45	I.C.C. 23795
Plant of Armour & Co., Jersey City, N.J.	Union Terminal Cold Storage Co., Jersey City	(4) $16 50	I.C.C. 23795

[fol. 530]

Piers 8 and 9, Hoboken, N. J.	Plant at Philippine Vegetable Oil Co.	(1) $17 60	I.C.C. 23795
Theobald Animal By Products Co. Harrison, N. J.	Woburn Degreasing Co., Harrison, N. J.	(2) $24 75	I.C.C. 23795

(1) Applies on Vegetable Oils only.
(2) Applies on Tallow and Animal Grease, inedible.
(3) Applies on Import, intercoastal and coastwise traffic.
(4) Applies on Meat, Lard and Packinghouse Products.

West Shore Railroad

Erie Connection at Weehawken, N. J.	North Yard at Weehawken, N. J.	$17 60	I.C.C. W.S. 5919
Float Bridge at Weehawken, N. J.	Elevator at Weehawken, N. J.	$17 60	I.C.C. W.S. 5919

Switching Costs for 1936 and 1937 of Hoboken Manufacturers Railroad Company

	1936		1937			
	Adjusted by Elimination of Items Applicable to Other Years Operations		Adjusted by Elimination of Items Applicable to Other Years Operations		Adjusted by Elimination of Items Applicable to Other Years Operations and Also to Basis of Original Contract With Seatrain Lines, Inc.	
Operating Expenses		304,964 07		309,121 24		316,536 44
Less:						
Station Employees—Handling		171,329 71		168,479 11		178,344 47
		133,634 36		140,642 13		138,191 97
Other expenses incurred in connection with loading and unloading cars and other deductible items:—						
Supplies	1,678 33		1,118 99			
Workm's. Comp. & Pub. Liab.	1,423 07		1,585 62			
Soc. Sec. & R.R. Carriers Tax	209 71		1,234 29			
Cost of Seatrain Ltge.*	1,860 00		1,445 00			
Per Diem—While under Dem (Est.)	3,621 00	8,792 11	5,602 00	10,985 90		10,[illegible] 90
Operating Expenses other than Handling		124,842 25		129,656 23		127,206 07
Taxes (Less Amount Billed Seatrain)		43,371 00		50,251 12		51,357 62
Rents—Inc. Per Diem—Debit Balance		3,660 59		11,467 05		11,696 75
Other Income—						
Misc. Rent Income	8,995 36		8,412 46		8,995 36	
Deduction From Income—						
Misc. Rent	11,870 42	2,875 06	12,445 72	4,033 26	11,869 42	2,874 06
Fixed Charges—						
Rent Road & Interest on Debt		54,729 60		59,149 86		59,149 86
		229,478 50		254,557 52		252,284 36
Hoboken Cars Handled		14,961		15,799		15,799
Average Switching Cost per Car		15 34		16 11		15 97
Hoboken Tons Handled		411,757		431,252		431,252
Average Switching Cost per Ton		55 7¢		59 0¢		58 5¢

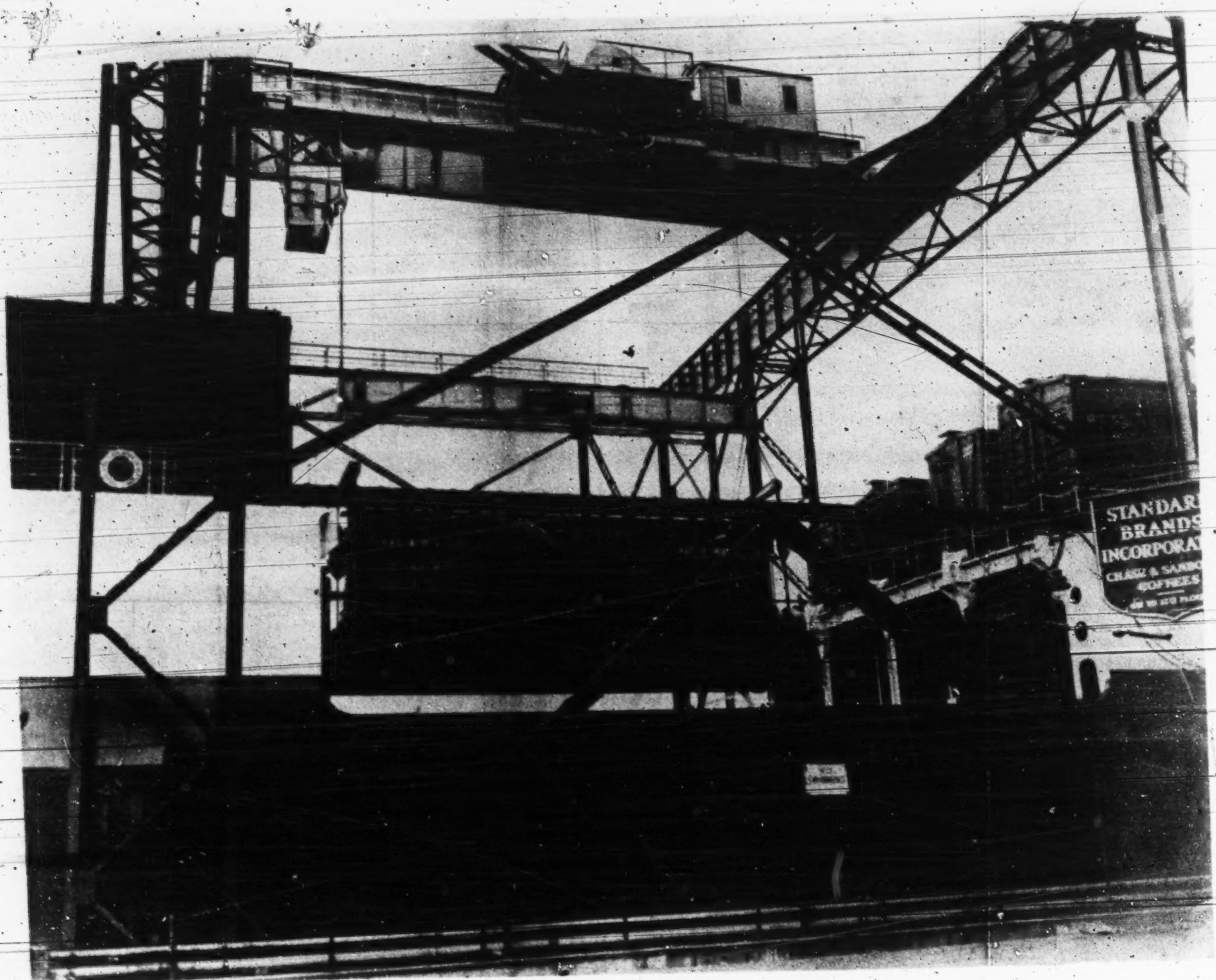
* Hoboken moved for Seatrain 744 cars in 1936 and 578 cars in 1937 between Seatrain vessels and lighters at the Seatrain berth. The cost per car of Hoboken for such movement was $2.50. As such business was not traffic of the Hoboken, the expense for handling it for Sea-

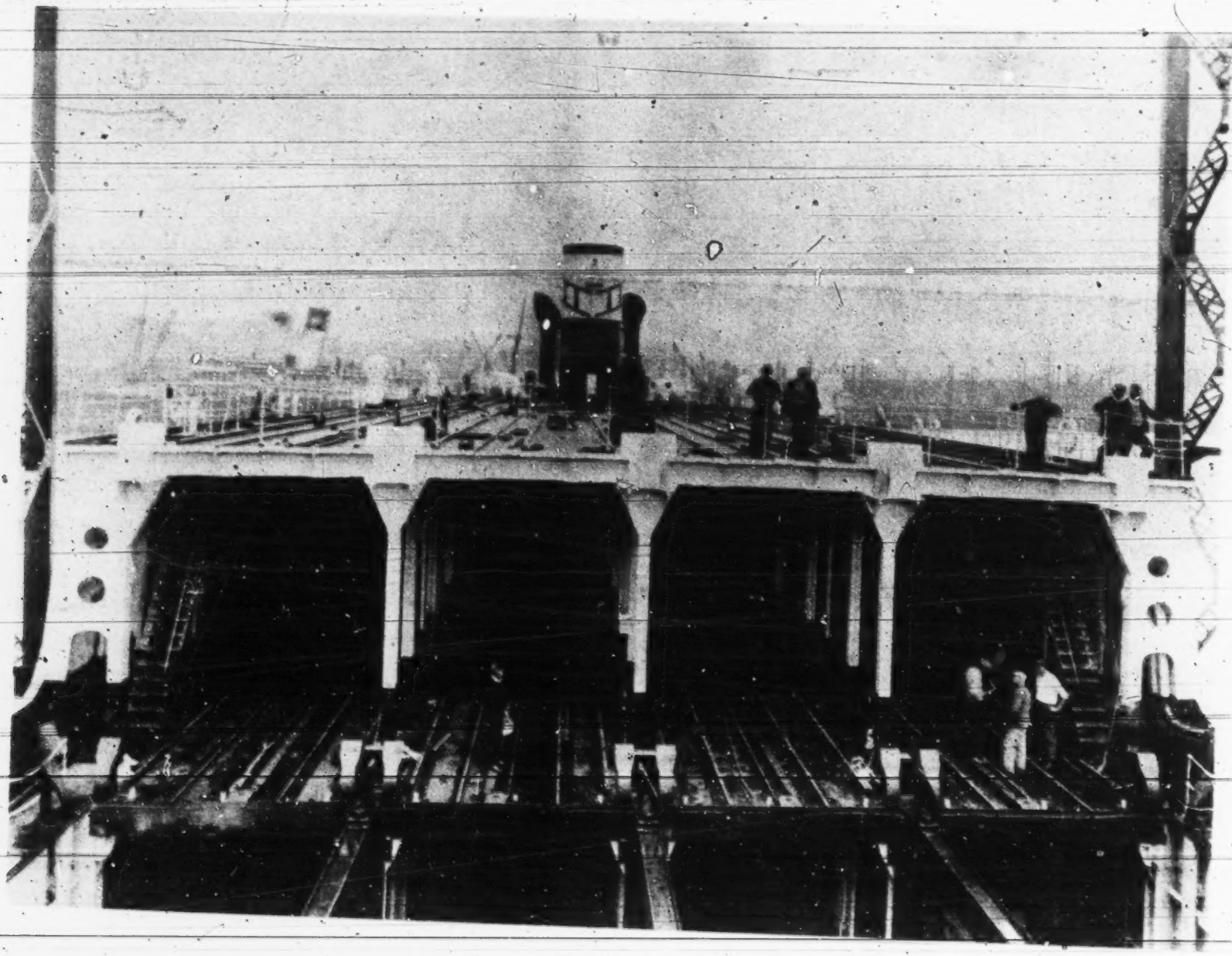
[fol. 532] EXHIBIT No. 8—WITNESS: GRAHAM M. BRUSH

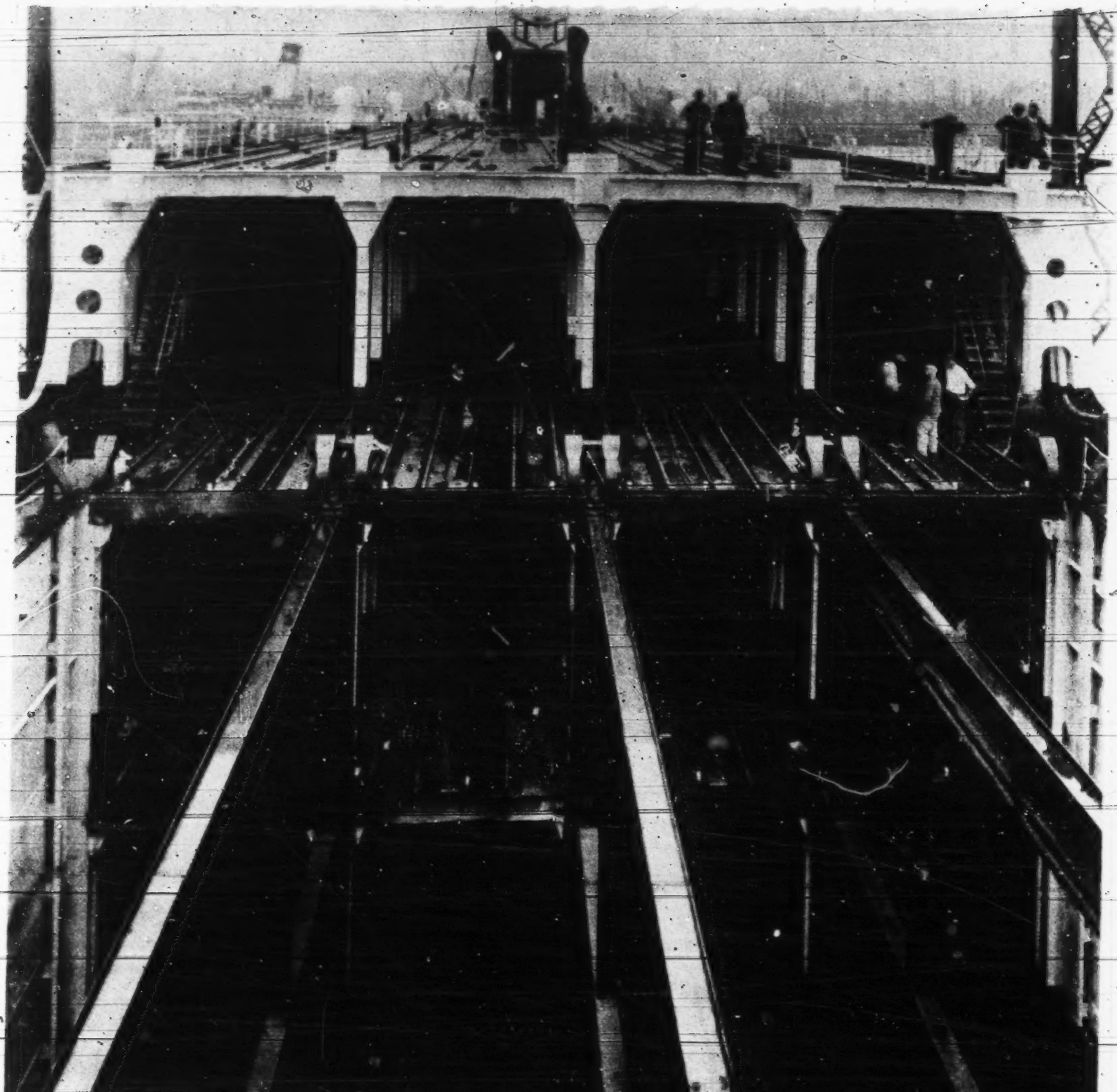
Freight Lightered by Trunk Lines to and from Points on the Hoboken Manufacturers Railroad
January to September, Inclusive, 1933, and Costs Thereof as Determined by Trunk Line Committee

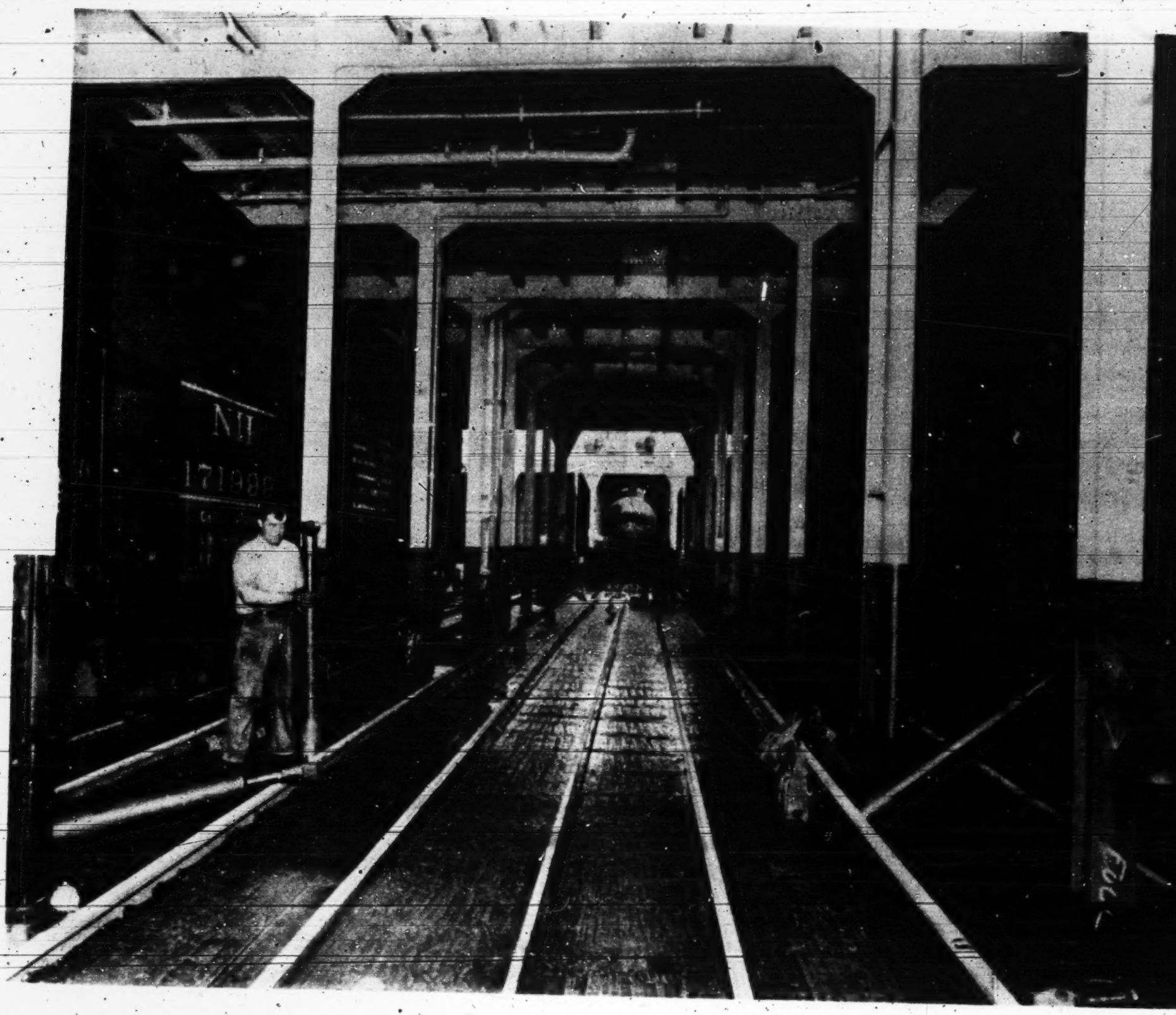
	Cars	Tons	Cost/Car	Cost/Ton
C. N. J.	301	4524	$30.41	$2.023
D. L. & W.	617	9705	23.42	1.49
L. V.	580	9896	23.86	1.398
P. R. R.	481	8199	29.24	1.715
N. Y. C.	658	10461	24.35	1.532
Erie	958	16483	28.04	1.630
	3595	59268	26.26	1.593

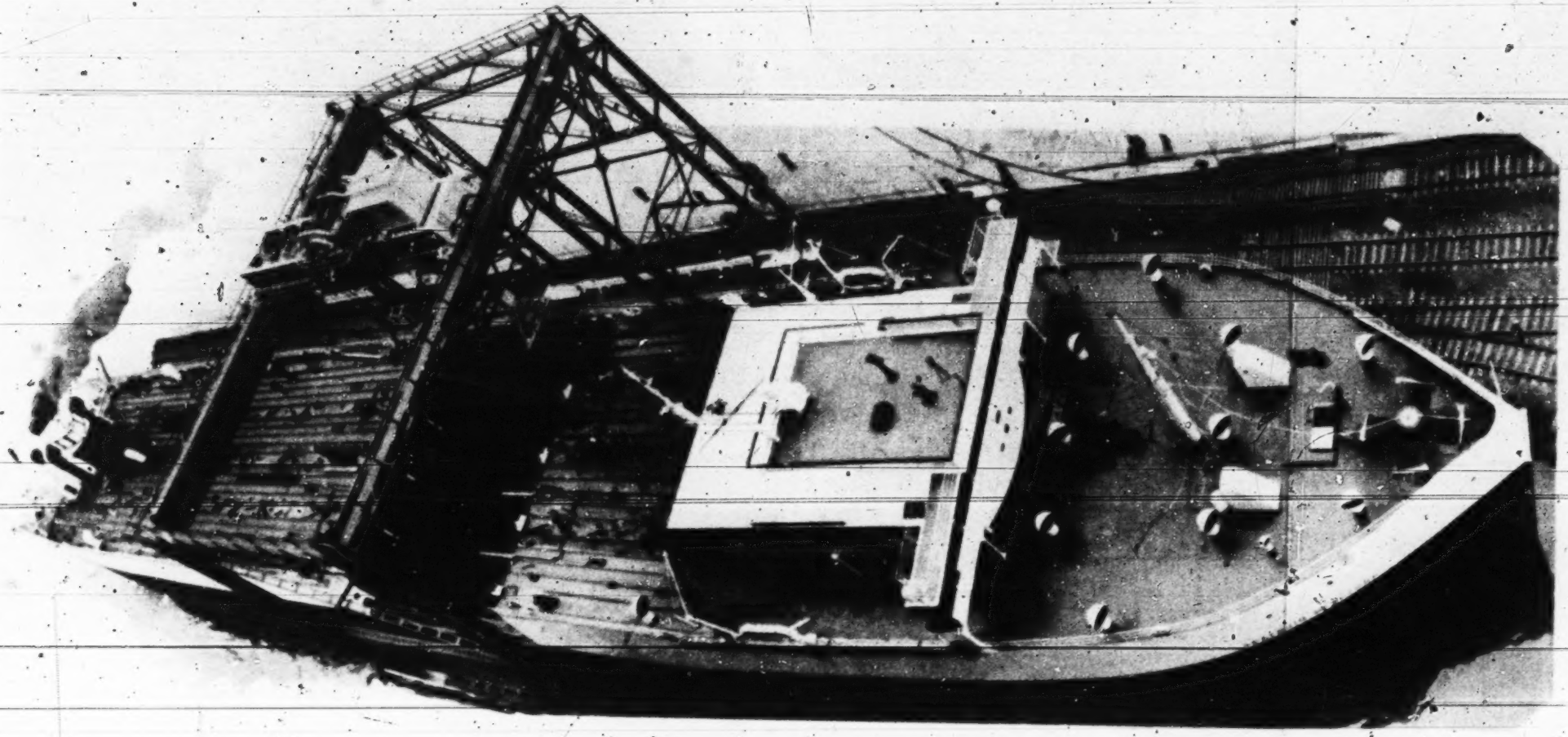
Note Average Load per Car of only 16.5 tons.

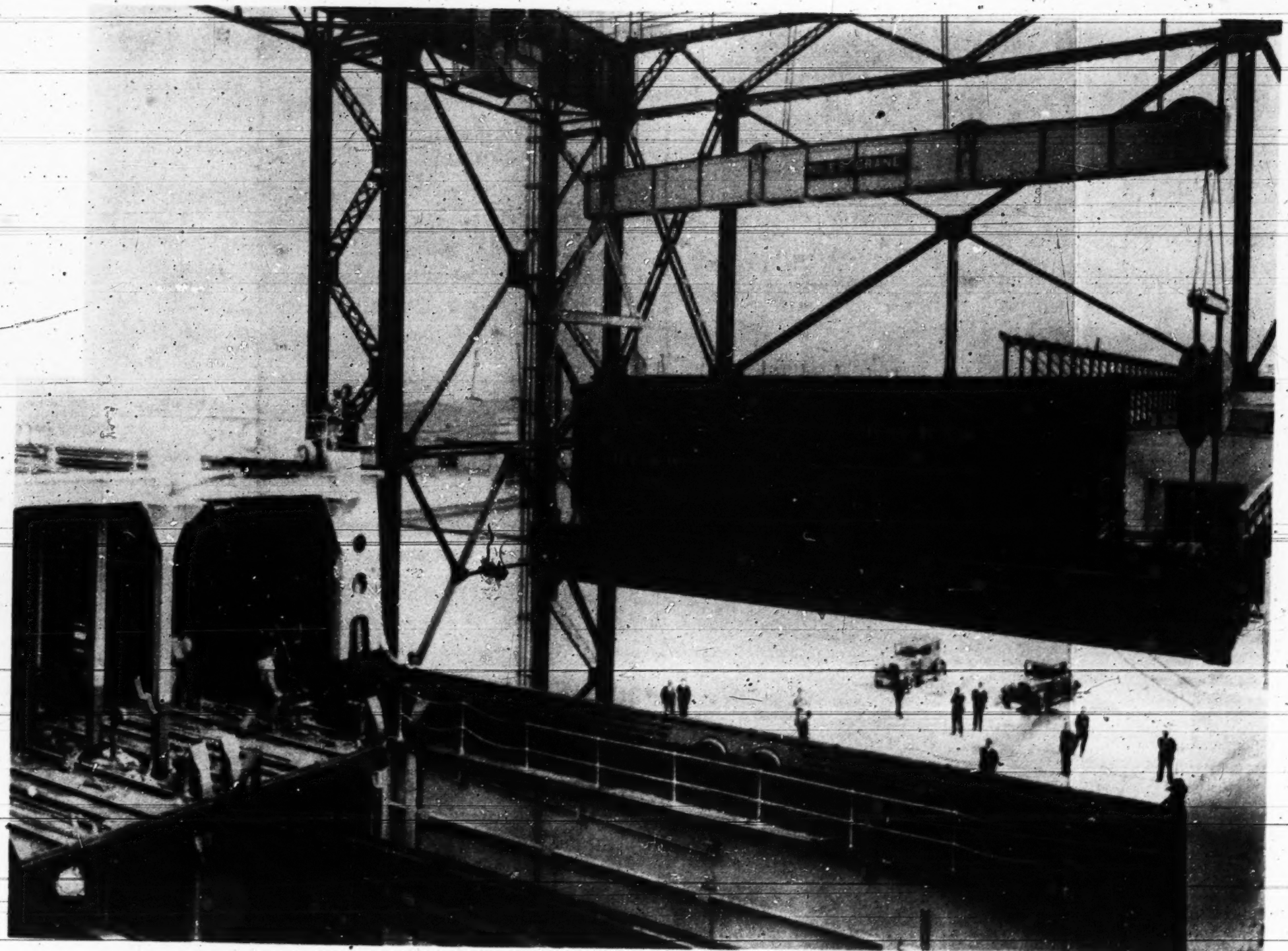

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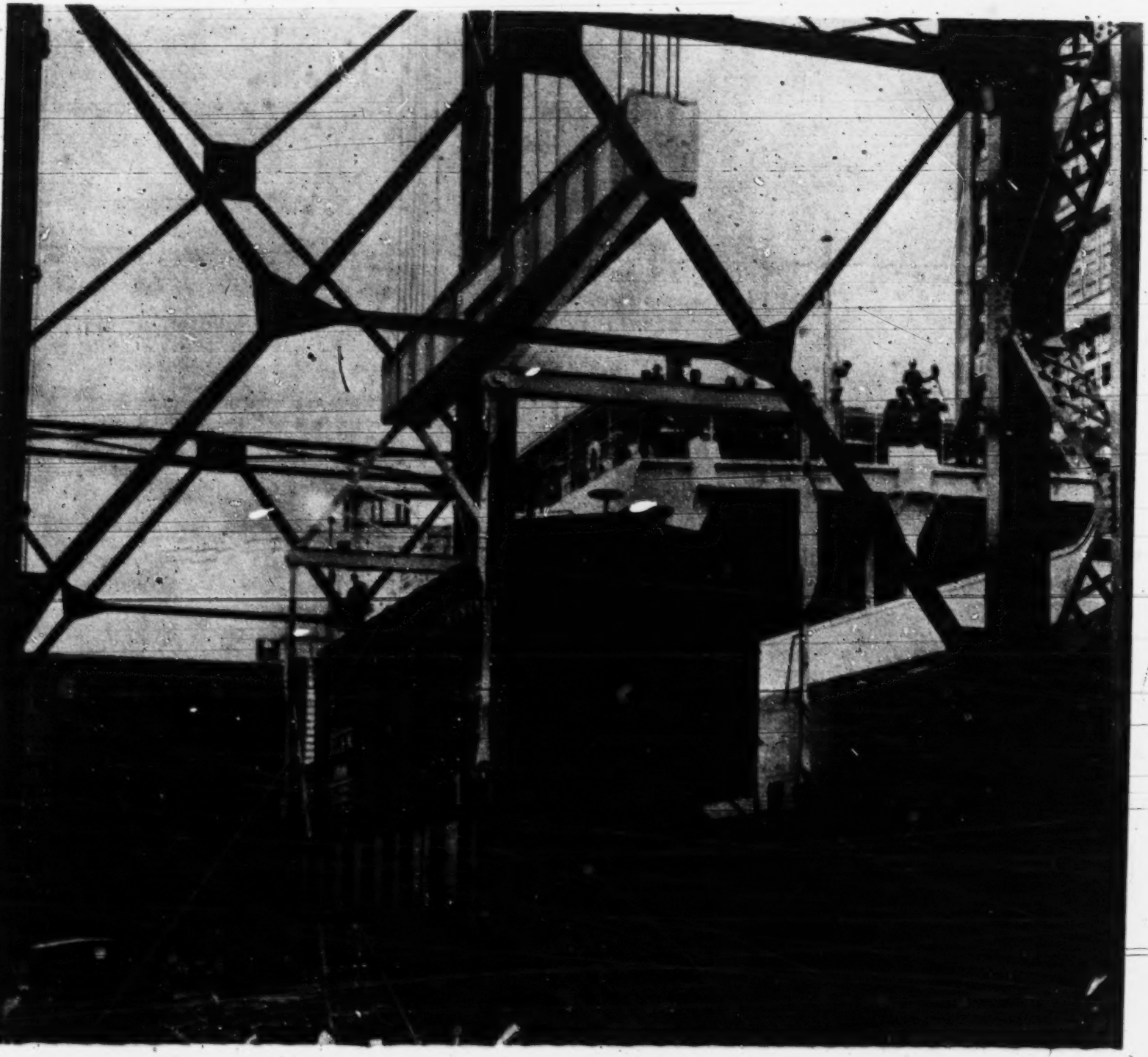


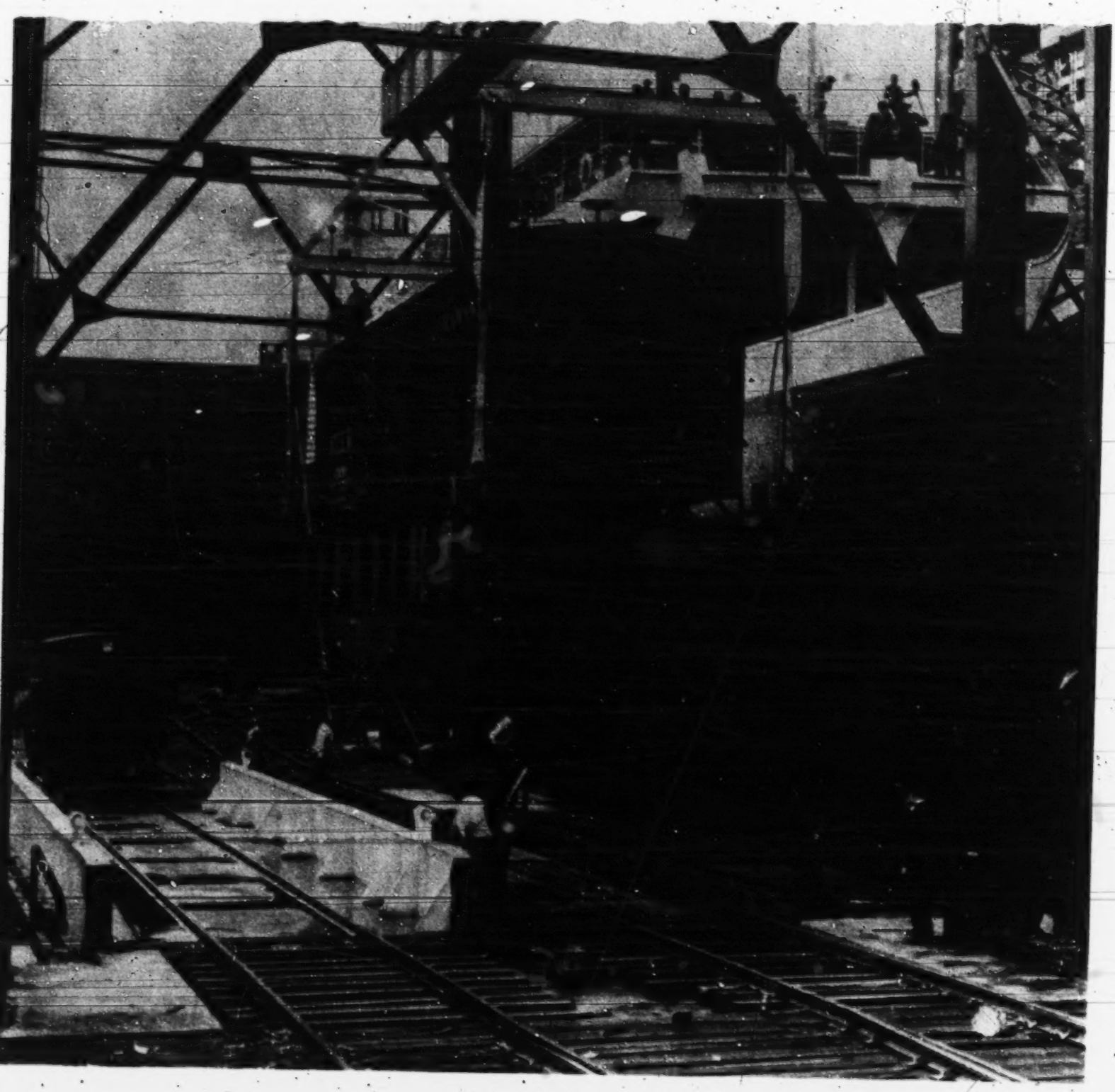


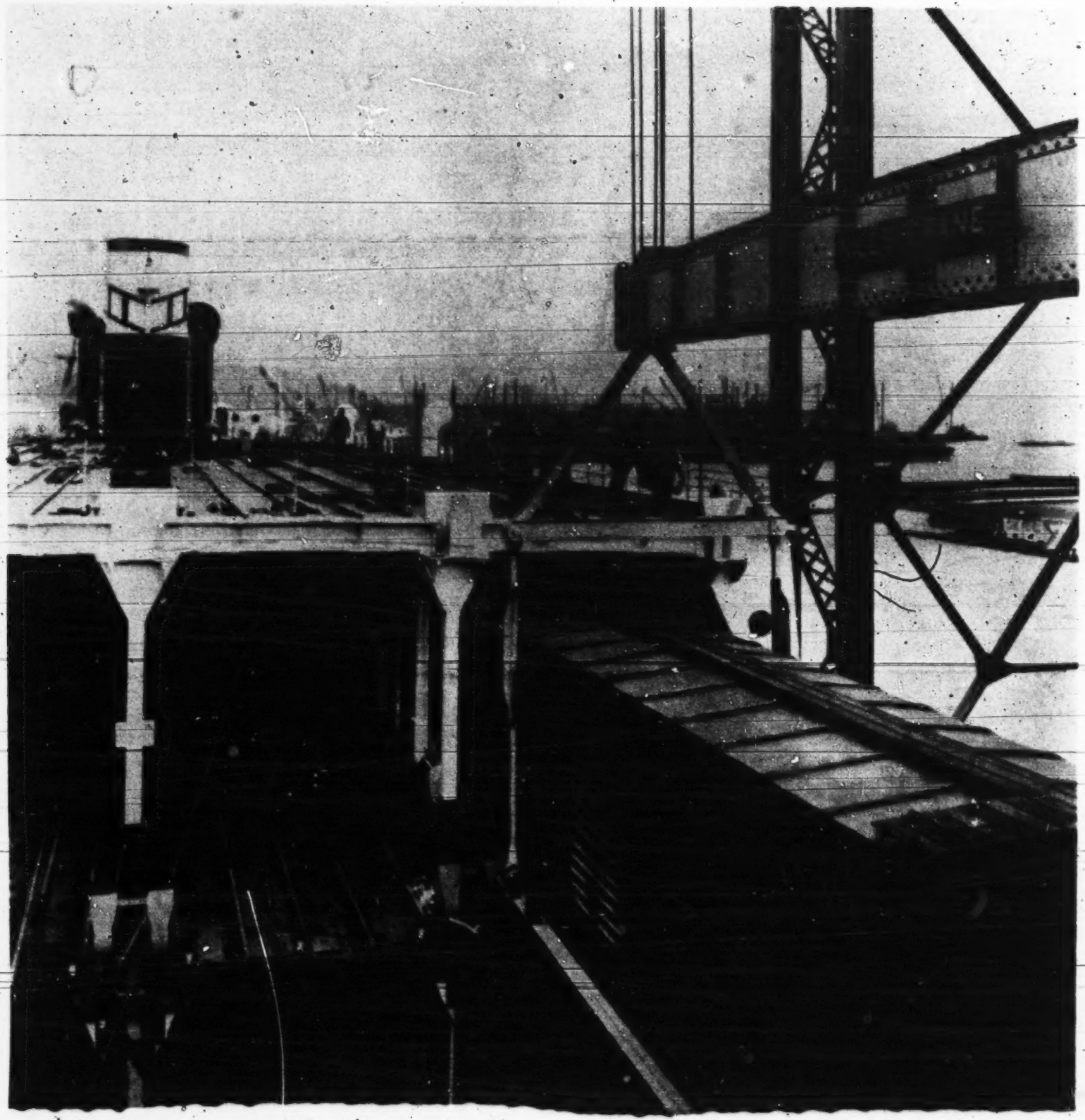

NH

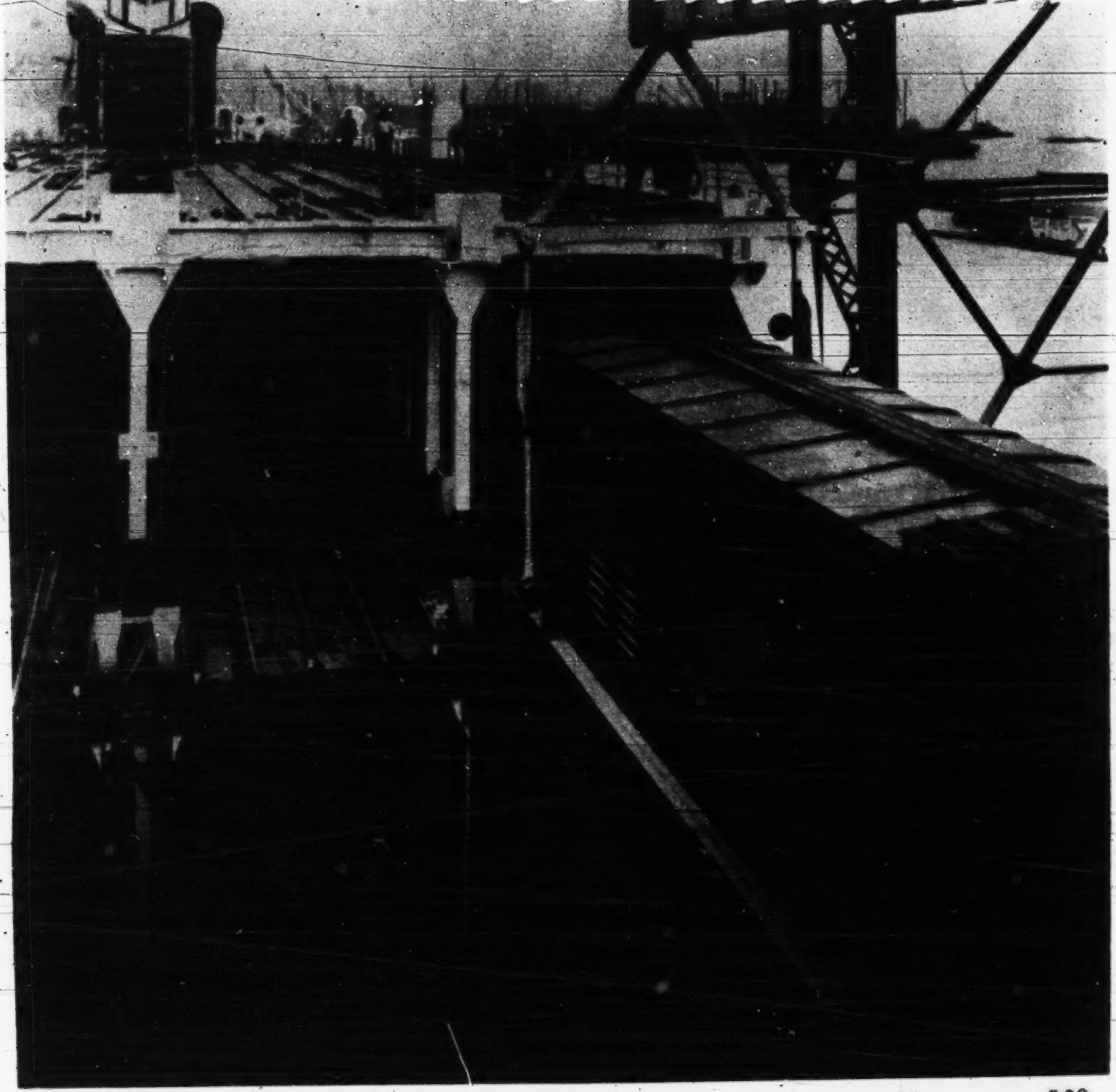












[fol. 540] EXHIBIT 10

Seatrain Lines, Inc., 39 Broadway, New York, N. Y.

GENTLEMEN:

We hereby sublet to you the trestle and slip adjacent thereto, being part of a certain parcel of property known as Plot B leased by us under an indenture made the 19th day of June, 1906 between the Hoboken Land & Improvement Company and ourselves, as amended by memorandum of agreement made the 26th day of February, 1929, together with all improvements thereon, including a car elevator or crane constructed on the trestle but exclusive of the tracks on said trestle except as hereinafter provided, for a term of three months commencing October 1, 1932, with a rental for the three-months' term equal to one-fourth of the sum of

(a) Such portion of the total annual rental which we are required to pay the Hoboken Land & Improvement Company under the lease above referred to, together with all taxes and other charges payable by us annually hereunder as the area of the property leased herein bears to the total area of Plot B, to be determined by mutual agreement between us, and if we cannot agree, then by arbitration;

(b) Six per cent of the amount which has been expended by us or which may hereafter be expended by us for improvements upon the leased property in order to [fol. 541] render the property suitable for the docking of your steamships and the interchange of freight and cars between our rails and your steamships; and

(c) Six per cent of the amount expended or hereafter to be expended by us in the rearrangement of the tracks contiguous to the leased property in connection with such improvements for the purposes just stated; plus

(d) The amount of depreciation charged on the leased premises at the rates and in accordance with the rules and regulations of the Interstate Commerce Commission.

As additional rental you are to maintain the property and cover it with adequate insurance at your expense.

In addition to the lease of the property above described and for the rental therein provided, we grant you a license

during the terms of this lease to operate any locomotives or cranes owned or leased by you over our tracks to the extent that such operation may be necessary in connection with the operation of the car elevator on the leased premises or the loading or discharge of Seatrain's ships in so far as the obligation to perform such loading or discharge devolves upon you. You, in turn, will allow our locomotives and cars to operate over any tracks upon the premises leased hereunder, said tracks being excepted from this lease, and will allow our agents and employees free [fol. 542] access to the leased premises for all purposes in connection with the handling of freight thereon and for the maintenance and repair of the tracks.

We hereby also lease to you for the same term the 12-16 ton W. J. K. gasoline mechanical locomotive, No. 13098, and the four flat cars recently purchased by us at a rental of six per cent per annum of the cost thereof to us plus depreciation thereon, as computed under the rules and regulations of the Interstate Commerce Commission, and as additional rental you will maintain said equipment and keep it insured for our and your account at your expense.

On the expiration of the term of this lease it may be renewed for another term of three months and will be considered renewed for said additional term and with the expiration of said additional term and of each further additional three-months' term thereafter during the term of the aforesaid lease from Hoboken Land & Improvement Company dated June 19, 1906 will be considered renewed for a further term of three months unless prior to the expiration of the present term of any succeeding three-months' term notice in writing shall be given by either party to the other of an intention not to renew.

This lease may be cancelled at any time by either party upon fifteen days' written notice to the other.

[fol. 543] This lease will be effective upon your acceptance of the terms above stated as indicated by your signature hereto.

Hoboken Manufacturers Railroad Company, by George S. Amory, Vice President.

We accept and agree to the terms of the foregoing lease.
Seatrain Lines, Inc., by Joseph Hodgson, Vice President.

[fols. 543A-543F] Exhibit 11 omitted. See Exhibit "6." Printed side page 59 ante.

[fol. 544] EXHIBIT No. 12

Witness: Graham M. Brush

(Copy)

Report of Majority of Operating Committee

New York, N. Y., May 9, 1935.

Mr. D. T. Lawrence, Chairman, Trunk Line Association, New York, New York.

DEAR SIR:

Herewith Recommendation of the Operating Committee on Seatrain matters:

1. The Hoboken Manufacturers tariff shows $1.00 per ton as its allowance for handling freight between Trunk Lines and Seatrain. Trunk Lines have been paying them 60¢ per ton. The Traffic Committee are to fix this question of allowance. If the allowance made to the Hoboken Manufacturers for Seatrain traffic is made sufficient to include reclaims, then no further reclaim will be necessary. If, however, the allowance as decided upon is not sufficient to include reclaim, then our recommendations are given below.

2. The Seatrain have an agreement dated November 15, 1932, with the Hoboken Manufacturers Railroad, copy attached, covering per diem rules, car service rules, M.C.B. rules, and freight claim settlements, and are willing to make similar agreements with all other railroads or with the Association of American Railroads. It is recommended that such agreement or agreements be made.

3. If, as outlined in No. 1, the allowance made to Hoboken Manufacturers Railroad is not to include the reclaim, then it is recommended that the actual reclaim incurred by Hoboken Manufacturers Railroad be paid, or, if desired to handle on an average time basis, then (1) compilation be made on cars to and from Seatrain, and (2) all other

freight; the final determination of which method is to be used to be made by the A. A. R.

4. If arrangements are made whereby the Trunk Lines will perform terminal switching service for account of Seatrain Lines, such Trunk Lines will reclaim against Seatrain Lines on such traffic in accordance with Per Diem Rule No. 5.

5. In considering reclaim it is recommended recheck be made from the date Seatrain operation started.

Yours very truly, D. W. Dinan (signed), R. E. Woodruff (signed).

[fol. 545] EXHIBIT No. 13

Witness: Graham M. Brush

(Copy)

Minority Report of Operating Committee Submitted by Pennsylvania Railroad

May 10, 1935.

Mr. D. T. Lawrence, Chairman, Trunk Line Association, New York, N. Y.

DEAR SIR:

Not being in agreement with the other two members of the Operating Committee considering Seatrain matters, I am submitting herewith a dissenting report on the subject:

The railroads should oppose setting up working arrangements with Seatrain for the following reasons:

1. The service is essentially that of an all rail carrier and not entitled to break-bulk rates.

2. The service is superior to that of the break-bulk routes and therefore rates should be higher.

3. Break-bulk routes will undoubtedly apply and secure a differential under Seatrain rates to which the railroads will probably contribute and further shrink their revenues.

4. Per diem is a reciprocal charge as between railroads based on the average cost of ownership, and if the railroads should eventually agree to take the plan of permitting the Seatrain to misuse their equipment by handling it contrary to the provisions of the Car Service Rules, consideration should be given obviously to an adequate charge for the use of railroad property predicated upon the value of the particular class of equipment used and not on the average ownership basis set up for reciprocal purposes.

5. Danger of spread to North Atlantic ports and to the Great Lakes if Seatrain were recognized in same category as break-bulk routes and accorded differential water and rail rates.

In view of the adverse effect Seatrain Lines has on the eastern and southeastern carriers, it is my opinion that the railroads should take uniform action and not deliver any cars to the Seatrain Lines, Inc., such action being defended under the provisions of Car Service Rule No. 4, reading as follows:

"Cars of railroad ownership must not be delivered to a steamship ferry or barge line for water transportation without permission of the owners filed with the Car Service Division."

A small group of railroads cannot legislate on per diem matters for all the railroads in the United States whose equipment might be subject to use by the Seatrain. Consequently, the New York Central Lines, the Erie and Pennsylvania Railroad cannot legislate on matters of this character. This must be placed in the hands of the A.A.R. in pursuance of the Car Service and Per Diem agreements. Therefore the matter of car hire should be referred to that body for their recommendations and their recommendations should be secured before any action is taken upon the question as to whether we shall or shall not establish through routes and rates via the Seatrain.

Yours very truly, J. F. Deasy, V.P. (signed).

[fol. 546] EXHIBIT No. 14

Witness: Graham M. Brush

Memorandum of Meeting of Special Committee of Traffic Executives Regarding Seatrain Matters, Held at 143 Liberty St., New York City, November 23, 1934.

Present:

Mr. C. J. Brister, Vice-President New York Central Lines.

Mr. D. L. Gray, Vice-President Erie Railroad (represented by Mr. G. C. Manning).

Mr. W. S. Franklin, Vice-President Pennsylvania Railroad.

Also present:

Mr. W. T. Stevenson, G.F.T.M. New York Central Lines.

Mr. E. J. Zachirpe, Asst. to Vice-President New York Central Lines.

Mr. J. B. Large, G.T.M. Pennsylvania Railroad.

Mr. D. T. Lawrence presiding.

Pursuant to the understanding at conferences of September 21, further consideration was given to the particular questions then outlined, dealing with arrangements with Seatrain Lines, Inc., and Hoboken Manufacturers Railroad.

A divergence of opinion developed as to proposals:

(a) To withdraw instructions not to receive shipments for movement beyond Hoboken via Seatrain Lines, Inc., and not to accept at Hoboken shipments arriving at that point via Seatrain Lines, Inc., except when moving under local bills of lading;

(b) To withdraw notice to Seatrain Lines, Inc., and Hoboken Manufacturers Railroad denying consent to use of railroad owned equipment by Seatrain Lines, Inc., and

(c) To give notice to the Car Service Division permitting the Hoboken Manufacturers Railroad and Seatrain Lines, Inc., to use cars of railroad ownership.

Inasmuch as these major questions involve the specific principles at issue it was understood that the individual

members of the committee would file with the Chairman separate memoranda outlining their views, and that it would be necessary to meanwhile defer action with respect to the collateral questions involved, dealing with:

(d) Form of allowance to the Hoboken Manufacturers Railroad, i. e. switching allowance or proportion of a through rate;

(e) Allowance to Hoboken Manufacturers Railroad of a proportion of emergency charges collected under Ex Parte 103;

[fol. 547] (f) The allowance to the Hoboken Manufacturers Railroad for handling Seatrain traffic to and from shipside, and

(g) Questions dealing with per diem and per diem reclaim.

It was understood that the Chairman would make report to the Presidents of New York Harbor lines without the necessity for issuance of minutes of this meeting.

Adjourned.

D. T. Lawrence, Chairman.

[fol. 548] PENNSYLVANIA RAILROAD

December 26, 1934.

Mr. D. T. Lawrence:

Referring to your joint letter of October 31, advising of my appointment on special committee of traffic Vice Presidents to study and report to the Presidents as to certain phases of Seatrain Lines situation which was discussed by the special committee on November 23rd, and as it was not possible to reach unanimous conclusions the following is submitted as my report.

As the method of handling traffic in connection with Seatrain Lines is generally understood, it does not appear necessary to recite the details. There are no through rates effective in connection with Seatrain Lines, the traffic being handled on basis of combination to or from Hoboken. Seatrain Lines, Inc., is seeking joint through rates with rail carriers in official territory to the same extent and on

the same level as are published in connection with non-break-bulk coastwise steamship lines. The rates of the break-bulk routes are on a differential basis—a differential rate is, of course, one that is lower than applicable between the same points via the standard all-rail route and is predicated upon the theory that the service rendered via such differential routes is inferior to that available via the standard all-rail route. It is this (lower) break-bulk differential basis of rates which Seatrain Lines proposes to operate jointly with the rail-carriers. The issuance of through bills of lading on domestic traffic and the cancellation of the restrictions against the use of railroad cars on vessels of Seatrain Lines is also sought.

The status of Seatrain Lines, Inc., is involved in several pending cases before the I. C. C. While it was found in Docket 25565 (195 ICC 215) in effect that Seatrain Lines, Inc., is not a common carrier by rail, this case has been re-opened and the following cases are now pending:

ICC Docket 25546. Application of the Missouri Pacific and Texas & Pacific under Panama Canal Act to retain an interest in Seatrain Lines in connection with which report of the Examiner has been issued, which in substance recommends approval of the application. While the Eastern lines have not objected, it is their contention that approval of the application will make Seatrain Lines subject to the Commission's jurisdiction as to minimum and maximum rates.

ICC Docket 25727. Seatrain Lines, Inc. vs. Railroads. Complaint of Seatrain Lines seeking joint rates, etc.

ICC Docket 25728 and 25878. Hoboken Manufacturers Railroad vs. Railroads and New Orleans & Lower Coast Railroad vs. Railroads. In these cases the car service rules are attacked and the Examiner recommends that the Commission has no jurisdiction, but if so, the rules complained of are not unreasonable.

U. S. District Court for Southern District of New York —New York Central Railroad Co., et al. vs. Seatrain Lines and Hoboken Manufacturers Railroad. In this case the Eastern rail carriers seek to enjoin the Hoboken Manufacturers Railroad Co. and Seatrain Lines, Inc., from using their cars in Seatrain Lines service.

[fol. 549] Thus it will be seen that practically the entire question of the status of this service is still undetermined.

It is our position that the request of Seatrain Lines should be denied for the following reasons:

1. The service is essentially that of an all-rail carrier.

A. The traffic is transported through from origin to destination in the box (or tank) cars and obviates the necessity of transfer from car to ship and vice versa.

B. The time in transit between New York (Hoboken) and New Orleans is but slightly greater than that of the all rail routes, and were the stop at Havana eliminated would undoubtedly equal or possibly be slightly faster than the all rail service.

C. The economies and savings resulting from the use of the box car as against the break-bulk route are present. In some cases the use of containers for the loading is eliminated and in practically all cases the shipper finds it possible to accomplish material saving in packing requirements necessary to withstand the transfer via the break-bulk routes.

D. In fact, for certain classes of traffic at least, Seatrain Lines service would appear superior to that of the all-rail routes, eliminating as it does transportation shocks incident to yarding of cars, stopping and starting of trains, passing over thousands of crossovers, etc.

E. Seatrain Lines transport not only the actual freight or lading but the car in which the freight is loaded. In other words, Seatrain operation utilizes the car as the container for the lading, transporting both lading and car containing the lading, as contrasted to the handling of the lading alone over the water portion of the break-bulk routes.

F. The same necessity is present for empty return movement of special equipment, such as tank cars, etc., as exists via the all-rail routes.

2. The service is superior to that of the break-bulk routes.

Of course, all that is said in the preceding paragraph establishing Seatrain Lines service as that of an all-rail route is equally applicable in demonstrating that it is superior to that of the break-bulk routes. The Examiner's report in ICC Docket 25565 clearly portrays this situation. It can readily be seen that if Seatrain Lines' rates are on a break-bulk differential basis then the coastwise break-

bulk water lines would strive for a still lower basis, so that instead of being confronted with a single form and basis of differential service the all-rail routes will have to contend with two such competitive services; that is, Seatrain service, enjoying differential rates while essentially an all-rail service, and the present break-bulk service but at rates materially lower than at present obtaining. The competition with the all-rail services would therefore be vastly increased by

1. The excellent service of Seatrain Lines at differential rates and

2. The lower rates applicable via the break-bulk routes

[fol. 550] It must be borne in mind that Seatrain Lines compete not only with the all-rail routes but with the break-bulk routes as well, and the latter lines have announced that in order to retain what they consider their fair share of the traffic that their rates will be further reduced. Therefore, for the all-rail lines to retain any portion whatever of the business the conclusion seems inevitable that:

3. Reduction in all-rail rates and revenues would follow.

4. Private car movements—The somewhat longer route via Havana of Seatrain Lines would result in greater mileage allowance for movement of privately owned cars than via the all-rail routes, provided Seatrain Lines made only the same per mile allowance as do the rail lines. It is interesting to note that in ICC Docket 24419 (188-ICC-377) it is stated that Overseas Railway, Inc. (predecessor of Seatrain Lines, Inc.), pay a mileage allowance of approximately 5 cents per statute mile of loaded ocean transportation per tank car from New Orleans to Havana.

Further, the wear and tear to the car itself is avoided when the car is moving via the Seatrain Lines. This results not only in prolonging the life of the car, thereby making it possible for the car so handled to earn greater mileage, but also avoids repair bills necessary when the car is handled over the all-rail service.

5. Per diem—While it is assumed that the operating committee will deal with this subject quite fully, it should be pointed out that even if Seatrain Lines paid the customary per diem charge (which they are not doing) the arrange-

ment would not be fair to the railroad carriers, as the per diem rules and charges are based on the reciprocal and interchangeable use by the rail carriers of the various classes of equipment they own and maintain.

6. In conclusion, it is considered of utmost importance that this class of service be not recognized in the same category as the break-bulk routes generally accorded differential rates. Should this eventuate and it be not only free from the inherent disadvantages of break-bulk service but substantially equal of rail service, it will be readily appreciated that such Seatrain service would be extended not only along the entire Atlantic and Gulf coast and tributary rivers but would spread to the Great Lakes as well, and with free and unrestricted interchange with the rail carriers the inroads thus made upon all-rail business would be tremendous:

1. At present the break-bulk lines, such as Eastern Steamship Company from New York, the Philadelphia & Norfolk Steamship Company from Philadelphia and the Bay Lines from Baltimore have differential water and rail rates from the North Atlantic port cities to points in Central Freight Association and Western territories via water to Norfolk and rail beyond.

Were the Seatrain Lines to inaugurate services from the North Atlantic ports, that is, Boston, Providence, New York, Philadelphia, Baltimore via Norfolk, and the rail lines recognized that Seatrain Lines is entitled to rates on differential equal to the break-bulk lines (lower than the all-rail route rates), a large porportion of the traffic now [fol. 551] moving from these port cities all-rail to the West which is not susceptible to transfer enroute, as is necessary via the break-bulk routes, would move via Seatrain Lines, thereby depriving all-rail carriers of a very valuable traffic.

2. Similarly, were Seatrain operation inaugurated on the Great Lakes and operated on a basis of break-bulk differential rates, the effect on the all-rail lines would be most serious, not only as to business between the Lake ports themselves, such as Buffalo, Cleveland, Toledo, Detroit, Chicago, Milwaukee, Duluth, etc., but also, and more important still, on all business between Eastern territory on the one hand and Central and Western territories on the other, e.g., such traffic from New York to Cleveland, Detroit,

Chicago or Milwaukee, on which all-rail movement is essential at present, would be subject to competition via Buffalo and the Lakes from such (Seatrain) service, which, while equivalent of all-rail movement, would offer (lower) differential rates.

In both these examples, all traffic, even tank car and refrigerator car business, would be open to the competition of a service equivalent to that of the all-rail routes as against the somewhat limited class of traffic available to the break-bulk routes, and this equivalent service would be on the basis of rates lower than applying all-rail. Such competition, offering the two-fold advantages of all-rail movement and lower than all-rail rates, would have a most serious effect on the revenues of the all-rail carriers.

For these reasons we feel that the necessity for declination of the requests under consideration have been clearly established.

(Signed) W. S. Franklin, Vice-President—Traffic.

[fol. 552] New York Central Lines

December 18, 1934.

Mr. D. T. Lawrence, Chairman,
Trunk Line Association,
143 Liberty Street,
New York, N. Y.

DEAR SIR:

Pursuant to the understanding reached at meeting held on November 23rd, the following is presented in connection with the matter of relations with Seatrain Lines, Incorporated.

Attached is Exhibit "A" showing a list of tariffs publishing joint through rail-water-rail rates applicable in connection with Seatrain Lines and rail carriers via the Port of New York.

In addition, Seatrain Lines publish southbound so-called "non-concurrence" tariffs ICC Nos. 10, 12 and 13, which have the effect of establishing through rail and water and rail-water and rail rates via Seatrain Lines, the same as are published by Agent Sedgmen under a similar tariff in connection with the "break bulk routes".

Should it be decided that joint working arrangements are not to be effected with the Seatrain Lines, Inc., the joint through rates published in tariffs shown in Exhibit "A" shall probably be cancelled for the reason that under these joint through rates through bills of lading are and have been issued to interior Eastern points since the rates were first inaugurated. Any attempt to cancel such rates would no doubt result in suspension proceedings before the Interstate Commerce Commission and the defense of the carriers would be extremely difficult.

The rail lines from and to the Port of New York receive their local rates as their proportions out of the through rates published in tariffs referred to, which is the same divisional basis as is applicable in connection with the "break-bulk-routes". There are a few instances in which the "break bulk routes" publish rates from Gulf ports, and the interior Southwestern points via Gulf Ports, to interior Eastern destinations where the rail carrier beyond the Port of New York receives less than their local rate—for illustration, rates on cotton. As indicated, however, there are no instances where the rail line beyond the Port of New York receives less than their locals on traffic interchanged with Seatrain Lines.

There is also attached Exhibit "B"—a statement listing the proceedings now pending before the Interstate Com-
[fol. 553] merce Commission and in the Courts, involving the handling of traffic in connection with Seatrain Lines.

For a period of several years the New York Central Lines have interchanged freight with the Seatrain Lines, the shipments being localized to and from New York; except that on northbound traffic moving under joint through rail-water and-rail rates to which the rail lines beyond New York are a party, the charges accruing up to New York are billed by the rail line from New York as advances and collected from the consignee.

So far as the New York Central and Erie are concerned, the cost of interchanging freight with the Seatrain Lines through the Port of New York shows a decided saving to the rail lines, as compared with the expense of interchanging like freight with the "break bulk lines". On the traffic interchanged with Seatrain Lines the expense incurred by the New York Central and Erie is the charge of the Hoboken Manufacturers Railroad, which amounts to 60¢ per ton (In addition to this amount the New York Central pay

the Erie 95¢ per car for trackage); whereas the current average lighterage expense on both East and Westbound traffic of the roads mentioned runs from $1.419 per ton to $1.69 per ton.

A statement of all business handled by Seatrain Lines for the months of July and September, 1933, and the October 4, 1933, voyages, was furnished by Seatrain Lines, Inc., and that portion interchanged with the Erie, Pennsylvania and New York Central was analyzed: It developed of a total of 373 cars but 46, or 12.3% could be considered as having moved by rail prior to the operation of Seatrain Lines. On the other hand, there were 64 cars (of the total of 373) or 17.2% of new traffic developed by Seatrain Lines, which was not previously enjoyed by the three lines mentioned. The detail of this analysis is contained in a rather lengthy report submitted to you and is available if desired.

Some reference has been made to the fact that working arrangements with Seatrain Lines contemplates the use by that line of railroad equipment and in connection therewith the matter of prompt remuneration for such use of equipment has arisen. The present per diem arrangement as effective between rail carriers might be considered of a reciprocal nature and the contention made that such reciprocal conditions do not obtain on cars interchanged between rail carriers and Seatrain Lines. On the other hand on the assumption that the currently established per diem rate if assumed by Seatrain Lines should be sufficient in view of the traffic revenue accruing to the rail carriers. It is from this source the railroads should receive their compensation and not from the hire of equipment. A not dissimilar situation exists in connection with per diem ar- [fol. 554] rangements between Trunk Lines and many of their short line connections. This per diem question, however, together with user's responsibility for equipment and proper interchange arrangements, are details which could no doubt be satisfactorily adjusted if and when the conclusions are reached as to whether or not carriers will work with Seatrain Lines.

The thought has been expressed by certain counsel entirely familiar with the litigation now pending between the rail carriers and Seatrain Lines that eventually the railroads will be forced to recognize the latter, and that likely more favorable conclusions could be reached under agree-

nent with the Seatrain Lines than if adjudicated by the Commission and/or by the Courts.

In view of all the facts and conditions as hereinbefore mentioned, it is recommended that the New York lines establish working arrangements with the Seatrain Lines the same as obtain in connection with the so-called "break-bulk roads".

(Signed) D. L. Gray, Vice President—Erie R.R.;
C. J. Brister, Vice-President—N. Y. Central R. R.

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EXHIBIT "A"

st of Tariffs Publish[illegible] Rates Via Seatrain Lines, Inc., and Which Also Apply In Connection with Trunk and New England Lines

Issued by	Tariff No.	I.C.C. No.	Description
ent J. E. Johanson	107-H	2594	Applying on wool and mohair from Texas to Atlantic ports and interior. Trunk Lines and New England lines are parties.
do.	16-X	2620	Applying on hides, pelts, skins and inedible tallow from New Mexico and Texas to Atlantic ports and interior. Trunk Lines and New England lines are parties.
do.	10-I	2545	Applying on ore and smelter products from Arkansas, Louisiana and Texas to Atlantic ports and interior. Trunk Lines and New England lines are parties.
do.	34-P	2597	Applying on commodities from Arkansas, Missouri and Oklahoma to Atlantic ports and interior. Trunk Lines and New England lines are parties.
do.	9-P	2631	Applies on classes and commodities from Atlantic ports and interior to Oklahoma. Trunk Lines and New England lines are parties.
do.	30-L	2502	Applying on classes and commodities from Texas to Atlantic ports and interior. Trunk Lines and New England lines are parties.
do.	5-T	2588	Applying on classes and commodities from Atlantic ports and interior to Arkansas and Oklahoma. New England lines are parties.
do.	177	2578	Applying on rice and its products from Arkansas, Louisiana and Texas to Atlantic ports and interior. Trunk Lines and New England lines are parties.
do.	179	2591	Applying on paper and paper bags from Arkansas, Louisiana and Texas to Atlantic ports and interior. Trunk Lines and New England lines are parties.

[fol. 556]

Issued by	Tariff No.	I.C.C. No.	Description
N.O.T.&M. Ry. Co.	1399-B	A-1114	Applying on commodities from Louisiana to North Atlantic ports and interior. Trunk Lines and New England lines are parties.
D.&R.G.W. R.R. Co.	6400-D	500	Applying on asphaltum, etc. from Colorado and Utah to Atlantic ports and interior. Trunk Lines and New England lines are parties.

[fol. 557] EXHIBIT "B"

Cases pending before the Interstate Commerce Commission and the Courts involving the handling of freight by Seatrain Lines, Inc.

Before the Interstate Commerce Commission:

I.C.C. Docket No. 25546, Application of the Missouri Pacific Railroad and the Texas & Pacific Railway Co. with respect to continuance of their interests in Seatrain Lines, Inc. This case is pending decision with the Commission.

I.C.C. Docket No. 25727, Complaint filed by Seatrain Lines, Inc., against refusal of defendant carriers to issue through bills of lading or establish combination of joint rates between Trunk Lines, New England, and Central Freight Association territories on the one hand, and Southern and Southwestern territories on the other. This case has not been fully heard and is held in abeyance on the Commission's record.

I.C.C. Docket No. 25728, Complaint of the Hoboken Manufacturers Railroad Company attacking the provisions of the American Railway Association Car Service Rule 4. This case was the subject of a tentative report by Examiner Flemming recommending against Seatrain Lines, Inc. Case not yet decided.

I.C.C. Docket No. 25878, New Orleans & Lower Coast Railroad Co. Same character of complaint as the Hoboken Manufacturers Railroad Company and covered by the same tentative report.

Before the Court:

Suit commenced in Federal Court, Southern District of New York, on petition filed by the Erie and New York Central Railroads against Seatrain Lines, for use of cars

other Trunk Lines intervened. No action has been taken to hear this case pending decision of the Interstate Commerce Commission in case involving Car Service Rule 4.

[fol. 558] EXHIBIT 15

Witness: Graham M. Brush

Mr. D. T. Lawrence, Chairman,
Trunk Line Traffic Executive Committee.

Pursuant to yours of February 9th, file 51450, the undersigned have reviewed the statement of traffic submitted by Seatrain covering July and September, 1933, and Oct. 4th, 1933, voyages, so far as business handled by their respective lines is concerned, and all of the traffic handled by Seatrain originating at or destined to points in the Metropolitan District of the Port of New York, i.e., New York City, Brooklyn, Jersey City, Hoboken, etc., and submit below report as to result of their studies.

For the periods shown the rail lines are in accord with the Seatrain as to actual number of cars handled by their respective lines, i.e.:

	Southbound	*Northbound*	*Total*
Erie	113	68	181
NYC	47	19	66
P RR	87	39	126
Total	247	126	373

Of this total number of cars the rail lines reports indicate there were 20 cars which prior to the advent of Seatrain moved all rail, which Seatrain claims moved either by rail & water, truck & water or all water, i.e.:

Erie	0
NYC	4
P RR	16
Total	20

As to several of these cars, there is some uncertainty as to the prior movement being all rail.

The number of cars in connection with which the rail lines are not in accord with Seatrain represents 5.4% of the total number of cars reported as having been handled by these three railroads.

The reports show that 116 cars moved rail & Seatrain which formerly moved via routes giving the rail carriers in Trunk Line territory no haul, i.e.:

Erie	77
NYC	11
P RR	28
Total	116

A summary of our studies indicate the following:

[fol. 559]

	No. Cars Erie	%	No. Cars NYC	%	No. Cars PRR	%	Total Cars	%
Diverted from all Rail	15	8.3	5	7.6	26	20.6	46	12.3
Diverted from Miss. Barge Lines	0	0	11	12.6	20	15.9	31	8.3
Diverted from Tankers	7	3.8	0	0.0	9	7.1	16	4.3
New business developed	48	26.5	12	18.2	4	3.2	64	17.2
Diverted from other steamship lines, Rail & Water, Truck & Water or all Water	111	61.4	38	57.6	67	53.2	216	57.9
Total	181	100	66	100%	126	100%	373	100%

These percents compare with the figures originally submitted by Seatrain as follows:

	Reported Seatrain interchanged with all Railroads July Cars	%	September Cars	%	Total Cars	%	Reported for account Erie, NYC and PRR Total period checked Cars	%
Diverted from all Rail	10	3.5	6	2.0	16	2.7	46	12.3
Diverted from Miss. Barge Lines	6	2.1	25	8.4	31	5.3	31	8.3
Diverted from Tankers	11	3.9	6	2.0	17	3.0	16	4.3
New business developed	21	7.4	19	6.3	40	6.8	64	17.2
Diverted from other steamship lines, Rail & Water, Truck & Water or all Water	236	83.1	245	81.3	481	82.2	216	57.9
Total	284	100.0	301	100.0	585	100.0	373	100.0

Copies of the reports covering the cars interchanged with these three rail carriers are attached.

In addition there is a statement which shows the most accurate information obtainable as to prior movement of such traffic as was handled by Seatrain during these periods to and from points in New York Metropolitan Area in connection with which no inland rail haul in Trunk Line territory occurred.

A summary of the analysis of the latter statement is shown below:

	Cars
Diverted from all rail	19
Diverted from Water, Water and Rail and Water and trucks	277
New business developed	98
Total	394

[fol. 560] Of the 19 cars shown above, as diverted from all-rail, 13 consisted of lumber, the consignees of which claim previously moved all-rail. However, this commodity is known to move both all-rail and rail-and-water in considerable volume. Some of the shippers claim they could not reach this market at the all-rail rates. Two of the 19 cars referred to consisted of staves, which the consignee states previously moved all-rail. However, the shipper states he could not have secured this business for all-rail movement. The Seatrain Lines are not willing to concede that all of these 15 cars previously moved all-rail.

The foregoing analysis covers 373 cars handled by these three railroads and 394 cars for the New York Metropolitan Area, a total of 767 cars or 78% of the total number of 984 cars reported by Seatrain. The remainder of 217 cars moves via routes other than the Erie, NYC and PRR, but no analysis could be made with response to said 217 cars.

G. C. Manning, Assistant Vice President—Erie RR; C. I. Johnson, Assistant General Freight Agent—NYC RR; V. P. Summerfield, Assistant Freight Traffic Manager—P RR.

EXHIBIT 15 WITNESS: GRAHAM M. BRUSH

TRAFFIC MOVING SOUTHBOUND VIA SEATRAIN - RECEIVED FROM ERIE RR - JULY, 1933

COMMODITY	SHIPPER	ORIGIN	DESTINATION	NO. CARS	ROUTE	STATE FOR TRAFFIC MOVED PRIOR TO INAUGURATION OF SEATRAIN SERVICE
Carbide Calcium	Dominion Carbide	Shawinigan Falls Can	Havana Cuba	1	CN-Erie	Rail & Water
Malt	Canada Malting Co	Winnipeg Man	"	2	CP-Erie	" "
Flour	Western Canada Pdr Co	Goodrich Ont	"	1	CP-Erie	" "
Nails & Wire	Construction Supp. Co.	Aliquippa Pa	"	1	P&LE-Erie	" "
Anhydrous Ammonia	Mathieson Alkali	Niagara Falls NY	Dallas Tex	1	Erie	All Rail - Erie
Liquid Chlorine	" "	" "	Hodge Texas	1	"	" " "
Paper Boxes	Brooklyn Cooperage Co.	Versailles Ct	New Orleans, La	1	NH-Erie	New business
Beverages	Cliquot Club Co	Cliquot Mass	" "	1	"	Water
Newsprint Paper	Int. Paper Co	Corinth NY	Dallas Tex	2	D&H-Erie	Rail & Water
Cork Sheets	Armstrong Cork Co	Beaver Falls Pa	San Antonio Tex	1	P&LE-Erie	All Rail
Milk Compound	A E Davis Co	Hoboken NJ	New Orleans La	1	Erie	Rail & Water
Machinery	Textile Mach & Supp Co	Fall River Mass	Laredo Tex	2	NP Erie	New movement
Machinery	" " "	Somersworth NH	"	7	"	"
Machinery	" " "	Pawtucket RI	"	3	"	"
Vegt. Soap	Colgate Palm Olive Peet	Edgewater NJ	Havana Cuba	1	Erie	For business
Electric Transformer	General Electric Co	Lynn Mass	Brandeport La	1	NH-Erie	Rail & Water
Plate Glass	Libbey Owens Ford	Toledo O	New Orleans La	1	C&O-Erie	Rail to St. Louis & Water
Air Compressors	Ingersoll Rand Co	Painted Post NY	Grandeport La	3	Erie	Rail & Water
Printing Paper	Int. Paper Co	Ft. Edward NY	Dallas Tex	1	D&H-Erie	" "
Steel Roofing	Wheeling Steel Corp.	Wheeling W Va	Wichita Falls Kas	1	T&LE-Erie	" "
Hardware	Wheeling Corrugating Co	Terminal Jct O	New Orleans La	2	" "	New business
Soda Ash & Caustic	Diamond Alkali	Painesville O	Harrys Tex	1	NYP-Erie	Rail & Water
Scale & Parts	Howe Scale Co	Rutland Vt	New Orleans La	1	B&A-Erie	" "
Steel Drums	Hershey Corp	Sharon Pa	Havana Cuba	1	Erie	For business
Electric Lamps	Westinghouse Lamp Co	Bloomfield NJ	Dallas Tex	1	"	Rail & Water
Lubricating Oil	Pennzoil Co	Rouseville Pa	San Antonio Tex	2	P&E-Erie	Rail, Water & Rail
Chicory	E A Miller & Co	Port Huron Mich	New Orleans La	1	GTW-Erie	Rail & Water
Soda Ash	Columbia Alkali	Barberton O	" "	1	Erie	Rail & Water
Anthracite Coal	Percy Parker & Son	Jessup Pa	" "	2	"	Rail to Philadelphia & Water
Shredded Wheat	National Biscuit Co	Niagara Falls NY	Houston Tex	1	"	All Rail - Erie
Steel Rail Bonds	Amer. Steel & Wire Co	Worcester Mass	Marshall Tex	1	NH-Erie	Rail & Water
Roofing Slate	Parsons Brothers	Pen Argyle Pa	New Orleans La	1	L&E-Erie	New business
Oil Stoves	Florence Stove Co	Gardner Mass	Dallas Tex	1	B&M-Erie	Water
Flour	Washburn Crosby	Buffalo NY	Havana Cuba	1	Erie	Rail & Water
Printing Paper	Eastern Mfg Co	Lincoln Me	Shreveport La	1	M&O-Erie	Water
Steel Rods	Oil Well Supp Co	Oil City Pa	Arp Tex	2	Erie	Rail & Water
Lubricating Oil	Penn Refining Co	Karns City Pa	Abilene Tex	1	B&O-Erie	"
Paper	Int. Paper Co	Niagara Falls Ont	New Orleans La	1	Erie	"
Bon Ami	Bon Ami Co	Manchester Ct.	Ft Worth Tex	1	NH-Erie	"
Ammunition	Remington Arms	Bridgeport Ct	New Orleans La	1	"	"
				57		

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TRAFFIC MOVING NOT ROUTED VIA RAIL-TRAIN LINES DELIVERED [illegible] - JULY 1933.

COMMODITY	CONSIGNEE	ORIGIN	DESTINATION	NO. CARS	ROUTE	STATE HOW TRAFFIC MOVED PRIOR TO INAUGURATION OF RAIL-TRAIN SERVICE
Lumber	Park Lumber & Sply. Co.	New Orleans, La.	Ridgefield Park NJ	1	Erie	Water & Truck
Cooperage	Virginia Barrel Co	"	Perineres Harbor SI	1	Erie-SIFT	New business
Box Material	E B Rogers & Son	"	Southampton LI	1	Erie-LI	All Rail
Lubricating Oil	Standard Oil Co	"	E Providence RI	7	Erie-PH	New business
"	Richfield Oil Co	"	Ellisville NY	1	Erie-LI	Water & Rail
Cottonseed Oil	Venice Imp Co	"	Brooklyn NY	2	Erie-BKDT	New business
Wrapping Paper	B F Blackmer & Son	"	Saratoga Springs NY	1	Erie-DH	Water & Rail
Fibreboard	A Wrson & Sons	"	Plattsburg NY	1	"	"
Carbon Black	Armstrong Rubber Co	"	West Haven Ct	1	Erie-WF	New business
Scrap Tin	Vulcan Detin'ng	"	Keville Island Pa	1	Erie-PGLE	All Rail-Erie
Green Hides	Endicott Johnson	"	Endicott NY	1	Erie	Water & Rail
Carbon Black	Goodyear Rubber Co	"	Middletown Ct	1	Erie-WF	All Rail-Erie —
Gasoline	S T Johnson	"	Revere Mass	1	Erie-BA	New business
Fellboard	Briggs Lumber Co	"	Oneonta NY	1	Erie-DG	Water & Rail
Pulpboard	Int. PaperCo	"	Ft. Edward NY	1	"	"
Wrapping Paper	Cramer-Farco Co	"	Rochester NY	2	Erie	Rail & Water
Hides	Lykos Bros	Havana Cuba	Westfield Pa	2	Erie-B&O	Water & Rail
Carbon Black	Endicott Johnson	New Orleans La	Johnson City NY	1	Erie	All Rail-Erie
Fellboard	Colotex Co	"	Bush Terminal NY	1	"	All Water
Cottonseed Oil	Western Prod Co	"	Long Island City	1	Erie-LI	New business
Lumber	Ramsey Lumber Co	"	Jersey NJ	1	Erie	Water & Truck
"	DeForest Matchkins Co	"	New Haven Ct	1	Erie-NH	Water & Rail
Wrapping Paper	Kalko Paper Co	"	Rochester NY	1	Erie	"
Cottonseed Oil	Ozark Refg Co	"	Brooklyn NY	1	"	New business
Lubricating Oil	Cities Service	"	E Braintree Mass	1	Erie-NH	All Rail-Erie
Pulpboard	Dashnick Carnico Mfg	"	Kings Park LI	1	Erie-LI	All Rail
Fibreboard	Wrecolline Lumber Co	"	Oxford NY	1	Erie-WYOM	Water & Rail
Lumber	Con Van Tuyl	"	Centreph LI	1	Erie-LI	"
"	Dennis Bros Inc	"	Locust Valley LI	1	"	"
Inner Bags	New England Bag & Pr	"	New Haven Ct	1	Erie-NH	Water
Salt	Chas. Schaeffer & Sons	"	Carlton Hill NJ	1	Erie	New movement
Asphalt	American Ford Rubber Co	Havana Cuba	Akron O	1	"	Water & Rail
				45		

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TRAFFIC MOVING SOUTHBOUND Via SEATRAIN FERRIES FROM ERIE PA - START DEC 1931

COMMODITY	SHIPPER	ORIGIN	DESTINATION	NO. CARS	ROUTE	STATE HOW TRAFFIC MOVED PRIOR TO INAUGURATION OF SEATRAIN SERVICE
Oil Tools Supplies	Oil Well Supply Company	Oil City, Pa	Fenderson Tex	1	Erie	Rail & Water
Anthracite Coal	Percy Peiler & Sons	Jessup, Pa	New Orleans La	1	"	Rail-Phila-Water
Roofing Slate	Pierson Bros Slate Co	Penn Argyl Pa	"	2	ERR-Erie	New business
Stoves & S.Pipe	Continental Stove Co	Ironton O	"	1	Erie	Rail and Mississippi River
Paper Boxes	Franklin Corrugate	Versailles O	"	1	WF-Erie	New business
Can Ends	Continental Can Co	Canonsburg Pa	"	3	[illegible]-Erie	Rail & Water
Crushed Limestone	U.S. Gypsum Co	Centerville Iowa	Sweetwater Tex	1	[illegible]-Erie	New business
Paper Tablets	Taylor Printing Co	E. Hartford Ct.	New Orleans La	1	"	Rail & Water
Chicory & Cereal	E T Mueller	Ft. Huron Mich	"	1	GT-Erie	"
Air Compressors	Ingersoll Rand	Painted Post NY	Greenwood La	2	Erie	"
Salt	Chas. Feltin & Co	Fairview Penn	Havana Cuba	4	GM-Erie	"
Wheat Flour	Washburn Crosby	Buffalo NY	"	2	Erie	"
Sewing Machinery	Chas. Jacobsitz	Cleveland O	New Orleans La	1	B/L-Erie	New business
Refrigerators	General Electric Co	Schenectady NY	"	1	BAY-Erie	Rail & Water
Wrought Pipe	Ystn. Sht. & Tube Co	Youngstown O	Houston Tex	2	Erie	"
Fixtures & Pipe	Cooling Corr. Co	Terminal Jct O	New Orleans La	2	WLB-Erie	New business
Paper	Eastern Mfg Co	Lincoln Me	Shreveport La	3	WCC-Erie	Water
Linseed Oil	Archer Daniels	Edgewater NJ	New Orleans La	1	WYS-Erie	Rail & Water
Mimeograph Paper	Int. Paper Co.	Gatineau Que	"	1	GT-Erie	"
Calcium Carbide	Union Carbide Co	Sheffield Falls	Havana Cuba	3	GM-Erie	"
Newsprint Paper	Int. Paper Co	Corinth NY	Houston Tex	2	DFF-Erie	"
Window Glass	Amer. Windowglass Co	Follo Vernon Pa	New Orleans La	2	WLB-Erie	Cargo
Cork Sheets	Armstrong Cork Co	Denver Falls Pa	Houston Tex	1	"	Rail & Water
Stl. Cans & Covers	Cooling Corr. Co	Terminal Jct O	New Orleans La	2	WLB-Erie	New business
Iron Castings	Tait Spiller Co	Boston Mass	Marshall Tex	1	FT-Erie	"
Printing Paper	Amer. Printing Pr. Co	Holyoke Mass	Dallas Tex	1	"	Water
Soda Ash	Diamond Alkali Co	Painesville O	San Antonio Tex	2	NKC-Erie	Rail & Water
Cranberries	Amer. Cranberry Co	Tremont Mass	New Orleans La	1	FT-Erie	"
"	" "	Onset Mass	Shreveport La	1	"	"
Roll Paper	Imperial Color Co	Glens Falls NY	Dallas Tex	1	DAP-Erie	"
Gas Stoves	Florence Stove Co	Gardner Mass	"	2	[illegible]-Erie	Water
Wheat Flour	Eastern Canada Mills	Goderich Ont	Havana Cuba	1	GM-Erie	Rail & Water
Printing Paper	Tennessee Paper Co	Erie Pa	New Orleans La	1	WCP-Erie	All Rail
Lubricating Oil	Penn Refining Co	Kerns City Pa	Dallas Tex	1	DSO-Erie	Rail-Water & Rail
Ammunition	Remington Arms	Bridgeport Ct	New Orleans La	1	FT-Erie	Rail & Water
Toilet Paper	Linton & Co	Cohoes NY	Dallas Tex	1	DFT-Erie	"
Paper Boxes	Atl. Carton Co	Norwich Conn	New Orleans La	1	FT-Erie	"
Printing Paper	Int. Paper Co	Niagara Falls NY	"	1	Erie	"
"	Eastern Mfg Co	Lincoln Me	Ft Worth Tex	1	MoC-Erie	Water & Rail
Can Aid	Can Aid Co	Manchester Vt	"	1	FT-Erie	Rail & Water
Continents	F J Feins Co	Allegheny Pa	Dallas Tex	1	DAC-Erie	"
Generator	Genl. Electric Co	Lynn Mass	Greenwood La	1	CAL-Erie	"
				61		

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TRAFFIC MOVING NORTHBOUND VIA SEATRAIN LINES DELIVERED ERIE RR - SEPTEMBER 1933

COMMODITY	CONSIGNEE	ORIGIN	DESTINATION	NO. CARS	ROUTE	STATE HOW TRAFFIC MOVED PRIOR TO INAUGURATION OF SEATRAIN SERVICE
Wrapping Paper	H D Knowlton Co	New Orleans La.	Rochester NY	2	Erie	New business
Paper Bags	N E Paper & Bag Co	"	New Haven Conn	1	Erie-NH RR	Water
Carbon Black	Endicott Johnson	"	Johnson City NY	5	Erie	Water & Rail
Fibreboard	Celotex Co	"	Bush Terminal NY	2	Erie-DT RR	All Water
"	"	"	Evergreen LI	1	Erie-LI RR	Water & Rail
"	"	"	Harlem River NY	1	Erie-NH RR	"
Scrap Tinplate	Vulcan Detinning	"	Neville Island Pa	2	Erie-P&LE	All Rail
Lubricating Grease	Richfield Oil Co	"	Ellisville NY	2	Erie-LI RR	Water & Rail
Cottonseed Oil	Seaboard Ref. Co	"	Edgewater, NJ	1	Erie	New business
Wood Pulpboard	General Woodcraft	"	No. Bergen NJ	1	"	Water & Truck
Carbon Black	J L Prescott Co	"	Passaic NJ	1	"	"
Paper Bags	Bridgeport Paper Co	"	Bridgeport Conn	7	Erie-NH RR	"
Household Goods	C J Zimmerer	"	Great Neck LI	1	Erie-LI RR	New business
Wrapping Paper	Armour & Co	"	Bangor Me	1	Erie-CAR	Water
Fibreboard	Celotex Co	"	Plattsburg NY	1	Erie-D&H	Water & Rail
Paper Bags	Grass City Paper Co	"	Waterbury Conn	1	Erie-NH RR	"
Carbon Black	Armstrong Rubber Co	"	West Haven Conn	1	"	"
Fibreboard	Celotex Co	"	Providence RI	1	"	"
Cottonseed Oil	Spencer Kellogg	"	Edgewater NJ	1	Erie-ERIE	New business
Salt	Mylos Salt Co	"	Bellevillo NJ	1	Erie	Water & Truck
Paper Bags	Dunnuchol Paper Co	"	Waterbury Conn	1	Erie-NH RR	Water & Rail
				35		

STATEMENT OF SOUTHBOUND SHIPMENTS SHOWN IN ST. LOUIS FREIGHT BUREAU BY SEATRAIN LINES AS MOVING VIA N.Y.C. AND N.S.L.Rs. DURING JULY & SEPTEMBER, 1933.

J U L Y, 1933

Car Initial	Number	Commodity	Shipper	Points of Origin		Destination		Routes	Routes used prior to Seatrain Service: As Reported by Seatrain	As Reported by N.Y.C. Lines
[illegible]	19862	Grape Juice	American Grape Juice Corp.	Prodonia,	NY	Waco,	Tex.	NYC-MP	Rail-and-water	New Business
PLMX	40163	Steel Pipe	Jones & Laughlin Steel Co	Aliquippa,	Pa.	Houston,	Tex,	P&LE-MP	"	Rail-and-water
D&L	15011	" "	Lohnak Tube Co	Cohoes,	NY	New Orleans,	La	D&L-MP	"	"
NYC	51831	Rods	Lomo Co., Inc.	Lomo,	NY	Wichita,	Tex.	NYC-MP	"	"
PeLE	47126	Valves & Parts,	Chapman Valve Mfg. Co.	Indian Orchard,	Mass.	Lafruta,	Tex.	[illegible]-MP	"	"
[illegible]	30274	" "	" "	"	"	"	"	"	"	"
CLX	3007	Lub. Oil,	Crew Lovick Co.	Titusville,	Pa.	Fort Worth,	"	NYC	All-rail	All-rail
CLCX	6005	" "	Penn State Petroleum Co.	Warren,	"	Austin,	"	"	"	New business
IP	246674	Newsprint Paper	International Paper Co.	Three Rivers,	PQ	San Antonio,	Tex.	CN-NYC	Rail-and-water	Rail-and-water
NYC	95745	Wire Fencing	J.F. Wright Steel & Wire Co.	Worcester,	Mass.	Tonawanda,	[illegible]	D&L-NYC	"	New business
"	238020	Ground Clay	International Pulp Co.	Ballsboro,	NY	New Orleans,	La.	NYC	"	Rail-and-water
"	256843	" "	" "	"	"	"	"	"	"	"
"	182856	Paper Napkins	Diamond Mills Paper Co.	Saugerties,	NY,	Dallas,	Tex.	NYC	"	New business
[illegible]	277850	Tin Plate	U.S. Steel Products Co.	Terml.Jct.	O.	Havana,	Cuba	D&O-NYC	"	Rail-and-water
[illegible]	22788	Cattle	Rafael Escribano	Albany,	NY	"	"	NYC	"	"
C/4	55006	Printing Paper	Hammermill Paper Co.	Erie,	Pa.	New Orleans,	La.	NYC-LV	"	"
[illegible]	271010	Glass Bottles	Knox Glass Co.	Uhrichsville,	Pa.	" "	"	D&O-NYC	"	"
[illegible]	156156	Soda Ash	Solvay Sales Corp.	Solvay,	NY	Fort Worth,	Tex.	NYC	"	"
[illegible]	45706	" "	Solvay Process Corp.	"	"	New Orleans,	La.	"	"	"
C/4	46691	Pulpboard & Woodpulp	The Holo-Pak Packing Corp.	Herkimer,	NY	" "	"	"	"	"
[illegible]	52778	Glass Bottles	Fm. Gaynor & Co.	Sutton,	Pa.	Havana,	Cuba.	"	"	"
									Rail-and-water 19	Rail-and-water 16
									All-Rail 2	All-Rail 1
									Total 21	New business 4
										Total 21

SEPTEMBER, 1933 (Including Oct. 4, 1933, Voyage)

JDMX	85	Lard	Jacob Dold Packing Co.	Buffalo,	NY	Havana,	Cuba	NYC	Rail-and-water	Rail-and-water
NYC	261055	Tin Plate	Jones & Laughlin Steel Co.	Pittsburgh,	Pa.	New Orleans,	La.	P&LE-NYC	Ohio-Miss.Barge Lines	Ohio-Miss.Barge Lines
"	55671	Toilet Paper	National Paper Products	Carthage,	NY	Dallas,	Tex,	NYC	Rail-and-water	Rail-and-water
"	35658	" "	" "	"	"	Austin,	Tex.	NYC	"	"
GATX	664	Olive Oil Foots,	United African Co.	Hoboken,	NJ	Ilasco,	Tex.	"	"	"
Mo.C.	35437	Papyrus Plates	Keyes Fibre Co.	Waterville,	Me.	New Orleans,	La,	Mo.C-MP	"	"
"	35710	" "	" "	"	"	" "	"	"	"	"
CN	504823	Newsprint Paper	International Paper Co.	Dalhousie,	NB	Gretna,	La.	CN-NYC	"	"
LEP	5762	Drawing Machinery	Chas.S. Jacobsen	Cleveland,	O.	New Orleans,	La.	C/4-NYC	"	New business
VBO	37480	Valves	Chapman Valve Mfg. Co.	Indian Orchard,	Mass.	Guandoport,	La.	D&L-MP	"	"
Mo.C.	5471	Woodpulp Plates,	Keyes Fibre Co.,	Waterville,	Me.	Dallas,	Tex.	Mo.C-MP	"	Rail-and-water
D&L	50955	" "	" "	"	"	"	"	"	"	"
CN	503326	News Print Paper	International Paper Co.	Dalhousie,	NB	San Antonio,	"	CN-NYC	"	"
PMLX	36432	Paper Napkins	Pollock Paper Box Co.	Saugerties,	NY	Fort Worth,	"	NYC	"	New business
NYC	54671	Toilet Paper	National Paper Products Co.	Carthage,	NY	Dallas,	"	NYC	"	Rail-and-water
"	161061	Tin Plate	Jones & Laughlin Steel Co.	Aliquippa,	Pa.	New Orleans,	La.	P&LE-NYC	Ohio-Miss.Barge Lines	Ohio-Miss. Barge Lines
"	160056	" "	" "	"	"	" "	"	"	"	"
"	182557	" "	" "	"	"	" "	"	"	"	"
"	100336	" "	" "	"	"	" "	"	"	"	"
"	246249	" "	" "	"	"	" "	"	"	"	"
"	245636	" "	" "	"	"	" "	"	"	"	"
"	116011	" "	" "	"	"	" "	"	"	"	"
"	255194	" "	" "	"	"	" "	"	"	"	"
D&L	36179	" "	" "	"	"	" "	"	"	"	"
C/4	54530	" "	" "	"	"	" "	"	"	"	"
"	56256	Toilet Paper	National Paper Products Co.	Carthage,	NY	Austin,	Tex.	NYC	Rail-and-water	Rail-and-water
									Rail-and-water 15	Rail-and-water 12
									Ohio-Miss.Lg.Line 11	New Business 3
									Total 26	Ohio-Miss.Barges 11
										Total 26

STATEMENT OF NORTHBOUND SHIPMENTS SHOWN IN STATEMENT FURNISHED BY SEATRAIN LINES AS MOVING VIA N.Y.C. AND U.S. Rts. DURING JULY & SEPTEMBER, 1933.

JULY 1933

Car Initial Number	Commodity	Consignee	Points of Origin	Destination		ROUTES	Routes used prior to Seatrain Service As reported by Seatrain Lines	Routes used prior to Seatrain Service As reported by N.Y.C. R.R.
274171	Carbon Black	Gunbaug Rubber Co.	New Orleans, La.	North Brookfield,	Mass.	WS-[illegible]	Rail-and-water	All-Rail (disputed)
21362	Lumber	Clark & Bennett Lbr. Co.	" " "	Haverstraw,	NY	WS	"	New Business
7-147	Fibreboard	Celotex Co.	" " "	Montpelier,	Vt.	WS-[illegible]	New Business	Rail-and-water
61151	"	" "	" " "	Brattleboro,	"	WS-[illegible]	" "	"
36366	Lumber	Young & Halstead Lbr. Co.	" " "	Mt. Kisco,	NY	NYC	Rail-and-water	New Business
94079	Wrapping Paper	K.E. Penny Co.	" " "	Syracuse	NY	NYC	"	All-Rail (disputed)
60700	Fibreboard	T.L. Haigh Lbr. Co.	" " "	Burlington,	Vt.	WS-[illegible]	New Business	Rail-and-water
61350	"	Macon & Parker Mfg. Co.	" " "	Hopkinton,	Mass.	WS-[illegible]	" "	"
70726	"	Westinghouse Elec. Co.	" " "	Springfield,	"	WS-[illegible]	" "	New Business
61309	"	H.D. Greene Lbr. Co.	" " "	Auburn,	NY	WS-NYC	" "	All-Rail (disputed)
272207	Carbon Black	Gunbaug Rubber Co.	" " "	Brookfield,	Mass.	WS-[illegible]	Rail-and-water	" " "
							Rail-and-water 5	Rail-and-water 4
							New Business 6	All-Rail 4
							Total 11	New Business 3
								Total 11

SEPTEMBER 1933 (Including Oct. 4th, 1933, Voyage)

142531	Paper Bags	S. Morris & Sons, Inc.	New Orleans, La.	Schenectady,	NY	WS-NYC	Rail-and-water	Rail-and-water
146607	" "	Schenectady Jobbing House,	" " "	"	"	"	"	"
63153	Fibreboard	The Celotex Co.	" " "	Martisco,	"	WS-MXC	New business	"
45062	Woodpulpboard	I. Goldberg	" " "	Tarrytown,	"	WS-NYC	Rail-and-water	New Business
70003	Wallboard	Celotex Co.	" " "	Cloversville,	"	WS-PJ&G	New Business	Rail-and-Water
64303	Fibreboard	" "	" " "	Springfield,	Mass.	NYC-[illegible]	" "	"
142153	Paper Bags.	C.H. Mead & Sons, Inc.	" " "	Rochester,	NY	NYC	Rail-and-water	"
61664	Lumber	Cornell Haviland Co.	" " "	Pleasantville,	NY	"	"	New Business
							Rail-and-water 5	Rail-and-water 6
							New Business 3	New Business 2
							Total 8	Total 8

566

PENNSYLVANIA RAILROAD
SOUTHBOUND - JULY 1935

ber	Commodity	Shipper	Origin		Destination		Route Used Prior to Sontrain Operation	
							As Reported by Sontrain	As Reported by Connecting Division Freight Agents
93931	Flour	International Milling Co	Buffalo	NY	Havana,	Cuba	Rail-and-Water	Rail-and-Water
95122	"	" "	"	"	"	"	"	"
350150	Steel Pipe	Alleghany Steel Co.	Brackenridge,	Pa.	New Orleans,	La.	Ohio-Miss.,Cargo Lines	Ohio-Miss. Cargo Lines
100734	Rugs, Carpeting, etc.	Congoleum Nairn, Inc.	Marcus Hook,	"	Monroe,	"	Rail & Water	Rail & Water.
51002	Can Ends	Continental Can Co.	Canonsburg,	Pa.	Harvey,	La.	Ohio-Miss. Cargo Lines	(1) No previous movement
99532	" "	" "	"	"	"	"	" " " "	(1) " " "
33576	Condiments	H.J. Heins Co.	Pittsburgh,	"	Dallas,	Tex.	All Rail	All Rail
45800	Caustic Soda	Columbia Alkali Corp.	Barberton,	O.	Colorado,	"	Rail & Water	Rail & Water
275539	Steel Plates	Central Iron & Steel Co.	Harrisburg,	Pa.	El Paso,	Tex.	"	"
540212	Tin Plate	Continental Can Co.	Weirton,	W.Va.	Havana,	Cuba	"	"
5189	Flour	Olavarria & Co.	Buffalo,	N.Y.	"	"	"	"
751522	Steel	Jones & Laughlin	Pittsburgh,	Pa.	"	"	"	"
124959	Can Ends	Continental Can Co.	Canonsburg,	Pa.	Harvey,	La.	Ohio-Miss. Cargo Lines	(1) No previous movement
96322	Stove Pipe	Loewes Manufacturing Co.	Dover,	O.	New Orleans,	"	Rail & Water	Rail & Water
3006	Lubricating Oil	Crew Levick Co.	Titusville,	Pa.	Shreveport,	"	All Rail	All Rail
54174	" "	Coast-2-Coast Oil Co.	Rousoville,	"	Dallas,	Tex.	Rail & Water	Rail & Water
900206	Sheet Iron & Steel	American Rolling Mills Co.	Butler	Pa.	"	"	" " ?	All Rail
44046	" " "	" " "	"	"	"	"	" " ?	" "
33547	Bronze Wire Cloth	Meilig Bros.	York,	"	New Orleans,	La.	"	Rail & Water
4265	Flour	International Milling Co.	Buffalo,	NY	Havana,	Cuba	"	"
3005	Lubricating Oil	Quaker State Oil Co.	Oil City,	Pa.	Austin,	Tex.	"	"
358935	Locomotive Tires	Rail by Steel Spring Co.	Latrobe,	"	Marshall,	"	"	"
4135	Lubricating Oil	Pennsoil Co.	Rousoville,	Pa.	San Antonio,	"	"	"
65201	Cocoa Powder	Blumenthal Bros.	Bradford,	Pa.	Dallas,	"	" ?	All Rail
73630	Petroleum Grease	Sherwood Petroleum Co.	Agwam,	"	New Orleans,	La.	"	Rail & Water
1044	Tin Plate	Standard Tin Plate Co.	Canonsburg,	"	Harvey,	"	Ohio-Miss. Cargo Lines	(1) No previous movement
5743	Can Ends	Continental Can Co.	"	"	"	"	" " " "	(1) " " "
3172	Castor Oil	Baker Castor Oil Co.	Jersey City,	NJ	New Orleans,	"	Trucks or Lighters	Trucks or Lighters
6424	Condiments	H.J. Heins Co.	Pittsburgh,	Pa.	Dallas,	Tex.	All Rail	All Rail
3412	Wire and Wire Fencing	Pittsburgh Steel Co.	Johnstown,	"	"	"	Rail & Water	Rail & Water
12141	Wire Rope	" " "	"	"	"	"	"	"
55006	Fence & Posts	" " "	"	"	"	"	"	"
330	Ethyl Fluid	Ethyl Gasoline Corp.	Coffeyville,	Kan.	Saint's Bluff,	"	All Rail	All Rail
4503	Short Steel Stove Pipe	Loewes Manufacturing Co.	Dover,	O.	New Orleans,	La.	Rail & Water	Rail & Water
3640	Galvanized Steel Hardware	" " "	"	"	" "	"	"	"
4353	Flour	Russell Miller Milling Co.	Buffalo,	NY	Havana,	Cuba	"	"
323435	Seamless Steel Drilled Tubes	Babcock & Wilcox	Beaver Falls,	Pa.	"	"	"	"
4994	Flour	International Milling Co.	Buffalo,	NY	"	"	"	"
4005	"	Olavarria & Co.	"	"	"	"	"	"
3411	Lubricating Oil	Quaker State Oil Refg.Co.	Bradford,	Pa.	Tyler,	Tex.	"	"
3340	Tin Plate	Weirton Steel Co.	Steubenville,	O.	Harvey,	La.	Ohio-Miss.Cargo Lines	Ohio-Miss. Cargo Lines
3394	Can Ends	Continental Can Co.	Canonsburg,	Pa.	"	"	" " " "	(1) No previous movement
3447	Lubricating Oil	Quaker State Oil Refg. Co.	Bradford,	"	Waco,	Tex.	Rail & Water	Rail & Water
3447	" "	" " " "	"	"	Dallas,	"	"	"

PENNSYLVANIA RAILROAD

NORFOLK - JULY 1,33'

Number	Commodity	Consignee	Origin			Destination		Route Used Prior to Seatrain Operation		
								As Reported by Seatrain		As Reported by Home Line Division Freight Agents
31741	Woodpulp Board	U.S. Gypsum Co.	New Orleans,	La.	Harrison,	NJ	Water & Rail	?	All Rail
75356	Staves	McNeill Cooperage Co.	"	"	"	Rahway,	"		Water & Rail
23457	Carbon Black	Electric Hose & Rubber Co.	"	"	"	Wilmington,	Del.		"
5201	Staves	McNeill Cooperage Co.	"	"	"	Rahway,	NJ		"
4356	Hoopin,	" " "	"	"	"	Phillipsburg,	"		"
51624	Pulpboard	U.S. Gypsum Co.	"	"	"	Kings Park,	NY	?	All Rail
45355	Lumber	Schwing Lumber Co.	"	"	"	Jersey,	"	?	" "
1766	"	" " "	"	"	"	Locust Point,	"	?	" "
5451	"	T.L. Sledge Lumber Co.	"	"	"	Kearny,	NJ		Water & Rail
146118	Roofing	Standard Oil Co. of N.J.	"	"	"	Bayonne,	NJ	?	All Rail
495	Cottonseed Oil	Venice Importing Co.	"	"	"	Brooklyn,	NY	New business from tank steamers	Water & Rail
455	" "	" " "	"	"	"	"	"		"
45	" "	" " "	"	"	"	E.New York,	"		"

(1) Prior to November 1, 1,32, shipper had no factory at New Orleans (Harvey) La. on that date factory was opened; first shipment made by Seatrain Lines November 27, 1,32; several cars have since moved all-rail. Available information indicates that prior to the advent of the Seatrain, the tin plate from which the cans for the New Orleans market area were made moved by barge from Norfolk, Va.

? - Indicates instances in which P.R.R. has been unable to agree with Seatrain with respect to the prior movement.

PENNSYLVANIA RAILROAD
SOUTHBOUND - SEPTEMBER 1933

Number	Commodity	Shipper	Origin		Destination		Route Used Prior to Sentrain Operation	
							As Reported by Sentrain	As Reported by Terms. & Div. Division Freight Agents
9342	Flour	International Milling Co.	Buffalo,	NY	Havana,	Cuba	Rail & Water	Rail & Water
10015	Tin Plate	Weirton Steel Co.	Weirton,	W.Va.	New Orleans,	La.	Ohio-Miss. Barge Lines	Ohio-Miss. Barge Lines
5334	Window Glass	American Window Glass Co.	New Kensington,	Pa.	" "	"	Rail & Water	Rail & Water
52403	Matches	Federal Match Co.	Bellefonte,	Pa.	" "	"	"	"
270343	Condiments	H.J. Heinz Co.	Pittsburgh,	"	Dallas,	Tex.	All Rail	All Rail
4014	Earthenware	E.M. Knowles China Co.	Newell,	W.Va.	New Orleans,	La.	" "	" "
57315	Tin Plate	Standard Tinplate Co.	Canonsburg,	Pa.	" "	"	Ohio-Miss. Barge Lines	(1) No previous movement
51644	Can Ends	Continental Can Co.	"	"	" "	"	" " " "	(1) " " "
54571	High Shelves & Parts	Wyncroft Stove Works	Millvale,	"	" "	"	All Rail	All Rail
54559	Petroleum Lubg. Oil	Quaker State Oil Refg. Co.	Oil City,	"	Waco,	Tex.	Rail & Water	Rail & Water
5481	Lubricating Oil	Standard Oil Co. of N.J.	Pittsburgh,	"	Dayton,	"	All Rail	All Rail
513555	Locks	Penn Hardware Co.	Reading,	"	Dallas,	"	Rail & Water	Rail & Water
00527	Bottle Caps	Armstrong Cork Co.	Lancaster,	"	"	"	"	"
517451	Earthenware	Taylor, Smith & Taylor	Chester,	W.Va.	New Orleans,	La.	Ohio-Miss. Barge Lines	Ohio-Miss. Barge Lines
5670	Tin Plate	Weirton Steel Co.	Weirton,	"	" "	"	" " " "	" " " "
42473	Castor Oil	Baker Castor Oil Co.	Jersey City,	NJ	Harrys,	Tex.	Water	Water
10540	Can Ends	Continental Can Co.	Canonsburg,	Pa.	New Orleans,	La.	Ohio-Miss. Barge Lines	(1) No previous movement
4576	" "	" " "	"	"	" "	"	" " " "	(1) No previous movement
54435	Tin Plate	Weirton Steel Co.	Weirton,	W.Va.	" "	"	" " " "	Ohio-Miss. Barge Lines
44	Wire Cloth	Roebling Bros.	York,	Pa.	Mobile	Ala.	Rail & Water	Rail & Water
3347	Lubricating Oil	Tylos & Moeller	Zanesville,	"	Dallas,	Tex.	"	"
20056	Machinery	Sieck Parker	Warren,	"	Havana,	Cuba	"	"
24744	Wire and Nails	U.S. Steel Products Co.	Monora,	"	"	"	"	"
3561	Short Flour	Olavarria & Co.	Buffalo,	NY	"	"	"	"
5 0	Lubricating Oil	Quaker State Refg. Co.	Oil City,	Pa.	Ft. Worth,	Tex.	"	"
34052	" "	" " " "	" "	"	" "	"	"	"
10901	" "	" " " "	"	"	Dallas,	"	"	"
3252	Cocoa	Blumenthal Bros.	Frankford,	"	"	"	"	All Rail
507203	Tin Plate	Weirton Steel Co.	Weirton,	W.Va.	New Orleans,	La.	Ohio-Miss. Barge Lines	Ohio-Miss. Barge Lines
4420	Condiments	H.J. Heinz Co.	Pittsburgh,	Pa.	Dallas,	Tex.	All Rail	All Rail
56617	Can Ends	Continental Can Co.	Canonsburg,	"	New Orleans,	La.	Ohio-Miss. Barge Lines	(1) No previous movement
42324	Tin Plate	Standard Tinplate Co.	"	"	" "	"	" " " "	(1) " " "
47110	Flour	International Milling Co.	Buffalo,	NY	Havana,	Cuba	Rail & Water	Rail & Water
7330	"	Russell Miller Milling Co.	"	"	"	"	"	"
72114	"	International Milling Co.	"	"	"	"	"	"
31755	Bottle Caps	Armstrong Cork Co.	Lancaster,	Pa.	Dallas,	Tex.	"	"
124317	Tin Plate	Standard Tinplate Co.	Canonsburg,	"	New Orleans,	La.	"	(1) No previous movement
55500	Lubricating Oil	Quaker State Oil Refg. Co.	Oil City,	"	Shreveport,	"	"	Rail & Water
00446	Gas Stoves & Parts	Wyncroft Stove Works	Millvale,	"	New Orleans,	"	All Rail	All Rail
1135	Can Ends	Continental Can Co.	Canonsburg,	"	" "	"	Ohio-Miss. Barge Lines	(1) No previous movement
100010	" "	" " "	"	"	" "	"	" " " "	(1) " " "
123151	Tin Plate	Standard Tinplate Co.	"	"	" "	"	" " " "	(1) " " "
1000	Inedible Tallow	Van Iderstine Co.	Ellisville,	LI	Havana,	Cuba	Rail & Water ?	Cuban-All Rail

PENNSYLVANIA RAILROAD
NORTHBOUND - SEPTEMBER 1, 33

Number	Commodity	Consignee	Origin	Destination	Route Used Prior to Sontrain Operation	
					As Reported by Sontrain	As reported by Penna. RR Division Freight Agents
47252	Wrapping Paper	Southern Kraft Corp.	New Orleans, La.	Jersey City, NJ.	All Water	All Water
5,776	Lumber	Schwing Lumber Co.	" " "	Florington, WV	Water & Rail	Water & Rail
51,57	Roofing	Standard Oil Co. of N.J.	" " "	Dayton, WV	" ?	All Rail
572	Staves	McNeill Cooperage Co.	" " "	Harrison, "	"	Water & Rail
121114	Roofing	Standard Oil Co. of N.J.	" " "	Kenova, "	" ?	All Rail
731	Staves	McNeill Cooperage Co.	" " "	Ona, WV, "	"	Water & Rail
	Carbon Black	A.T. Vanderbilt Co.	" " "	Preston, "	"	"
1,3	Lubricating Grease	International Lub. Corp.	" " "	Clarendon, Pa.	"	"
755	Cottonseed Oil	Venice Importing Co.	" " "	Brooklyn, NY	"	"
757	" "	" " "	" " "	" "	"	"
5,34	Paper	Southern Kraft Corp.	" " "	Jersey City, NJ	All Water	All Water
132234	Roofing	Standard Oil Co. of N.J.	" " "	Dayton, "	Water Rail ?	All Rail
15,617	Woodpulp Board	U.S. Gypsum Co.	" " "	Harrison, "	" ?	" "
773	Cottonseed Oil	Venice Importing Co.	" " "	Brooklyn, NY	"	Water & Rail
74	" "	" " "	" " "	" "	"	"
431	" "	National Oil Products Co.	" " "	Newark, NJ	No previous movement	No previous movement
527	" "	Amsh Refining Co.	" " "	Brooklyn, NY	New business developed Sontrain. ?	All Rail
4,183	Fibreboard	Celotex Co.	" " "	Riverhead, LI	No previous movement	No previous movement
2,1	Lubricating Grease	International Lubricant Corp.	" " "	Ellisville, "	Water Rail	Water Rail
7,5	Household Goods	C.F. Zinsmeyer	" " "	Private Home, "	"	" "

NORTHBOUND - DECEMBER 1, 33

1177	Fibreboard	Celotex Co.	New Orleans, La.	Local Terminal, NY	New business	No previous movement
2	Lubricating Grease	International Lub. Corp.	" " "	Ellisville, LI	Water & Rail	Water & Rail
7,111	Roofing	Standard Oil Co. of N.J.	" " "	Dayton, WV	" ?	All Rail
33	Cottonseed Oil	Southern Kraft Co.	" " "	Local Terminal, "	No previous movement	No previous movement

(1) Prior to November 1, 1932 shipper had no factory at New Orleans (Harvey), La. on that date factory was opened; first shipment made by Sontrain Line November 17, 1932; several cars of these were all-rail. Available information indicates that prior to the advent of the Sontrain, the tin plate from which the cans for the New Orleans market were made moved by barge from Norton, W.Va.

? - Indicates instances in which P.R.R. has been unable to agree with Sontrain with respect to the prior movement.

TRAFFIC MOVING SOUTHBOUND VIA SEATRAIN LINES ORIGINATING AT HOBOKEN, N.J. LOCALLY - JULY 1933

COMMODITY	SHIPPER	ORIGIN	DESTINATION	WHERE DOES TRAFFIC ORIGINATE	NO. CARS	ROUTE	HOW DOES TRAFFIC MOVE TO HOBOKEN	HOW DID TRAFFIC MOVE PRIOR TO INAUGURATION OF SEATRAIN SERVICE
Milk & Cocoa Comp.	H H Davis	Hoboken NJ	Dallas, Tex	Hoboken	1	Local	-	Erie - Water
Asbestos Paper	Great Eastern Mfg. Co	"	New Orleans, La.	"	3	"	-	" "
Beer	Piel Bros	Brooklyn, NY	"	Brooklyn	5	"	Truck	New business
General Misc	Storch Trucking Co	New York NY	"	"	1	"	"	Water
Bottle Caps	Cons. Cork Co	Brooklyn NY	"	"	1	"	"	"
" "	Humdol Cork Corp.	"	"	"	1	"	"	"
Paper	Boyd Weir & Sewell	New York NY	"	The Orient	1	"	Import SS	"
General Misc	Sea. Terminal Co	"	"	New York	10	"	Truck	"
Cotton Rags	Weight Bag Co	Brooklyn NY	"	Brooklyn	1	"	"	"
Condensed Milk	Van Kool Cond. Milk Co	Hoboken NJ	Havana Cuba	Holland	1	"	Import	"
Apples	Henry Lustig Co	"	"	Western pts.	1	"	Truck	Rail & Water
Binder Board	Davey Co	"	Dallas Tex	Jersey City	1	"	"	Truck & Water
Batteries	Nat'l Battery Co	"	New Orleans, La.	Ho. Jersey	1	"	"	"
Beer	Ringe Brewery	"	"	Brooklyn	1	"	"	New business
Bread	Steel Cutter Co	"	"	(Newark NJ (Prov. RI	2	"	Truck & Boat	Rail & Water
Coffee	Booth Amer. Shipping	"	"	New York	1	"	Lighter	Water
Rubber	"	"	"	"	2	"	"	"
Tea	Thos Lipton	"	Dallas, Tex	Hoboken	2	"	Truck	Truck & Water
Rubber	M Kelley & Sons	"	Havana Cuba	New York	1	"	Truck	Water
Apples & Peaches	"	"	"	"	1	"	"	"
W. Carrels	Nat'l Biscuit Co	"	New Orleans La.	"	1	"	"	New business
Beer	Leisman Brewery	"	"	Brooklyn	1	"	"	"
Tea	Celanese Celan. Alive	"	"	Jersey City	1	"	"	Water
Water Softening Mchy	The Permutit Co	"	"	Buffalo NY	1	"	NYC RR	Rail & Water
Tank Wagon	French Oil Mch Co	"	"	New York	1	"	Lighter	Water
					44			

TRAFFIC MOVING NORTH ON THE SEVENTH LINES DESTINED NORTH, NO. 1 JANY - JULY 1,33

	CONSIGNEE	ORIGIN	DESTINATION	FULL DESTINATION	No. CARS	LOAD	ADDRESS	HOW LOADS TRAFFIC MOVE FROM WATER	HOW ALL TRAFFIC MOVE FROM TO WATER OF SEVENTH AVENUE
ish	U S Stacked Fish Corp	New Orleans La	Hoboken NJ	Brooklyn	1	Local	Brooklyn NY	Truck	All Rail
	Lehigh Salt Co	"	"	Hoboken	14	"	Hoboken NJ	-	New business
	A Myers	"	"	Mct. Aron	1	"	Newark NJ	Truck	Water
	Olsen Bros Parlor	"	"	Hoboken	4	"	Hoboken NJ	-	"
rial	F A Gordon	"	"	Mct. Aron	5	"	Elizabeth NJ	Truck	"
	Nat'L Box & Lbr Co(Newark)	"	"	Hoboken	5	"	Newark NJ	-	"
	F A Niles Lbr Co	"	"	"	1	"	New York NY	-	"
	Brooklyn Box & Lbr. Co	"	"	Brooklyn	1	"	Brooklyn NY	Truck	New business
ator	Reliance Paper & Twine	"	"	New York	10	"	New York NY	"	"
	Deisler Goldman Co	"	"	Belleville	4	"	Belleville NJ	"	Water
	Union Bag & PaperCo	"	"	Hudson Falls	5	"	Long Island Cy.	"	Truck
ock	S Sofian Inc	"	"	Jersey City	5	"	Jersey City NJ	"	Water & Truck
	Kelly Springfield Tire Co	"	"	Cumberland	2	"	Cumberland Md	"	Water
	Alex Thayer Inc	Havana Cuba	"	New Brunswick	2	"	Hoboken NJ	"	Water & Rail
	Thomson & Orth	"	"	Jersey City	2	"	New York City	"	Water
apr	Hershey Corp	"	"	Various	1	"	"	Storage	"
	Sucrose Corp	"	"	"	3	"	"	"	"
	[illegible]ville	"	"	NewYork	4	"	Philadelphia	Truck	"
	Jefferson S-lt Co	Jefferson Is La	"	Brooklyn	24	"	Hoboken NJ	Lighter	"
	Halligan & McLellan	New Orleans La	"	New York	5	"	New York City	Truck	All Rail
	E T Slack & Co	"	"	"	2	"	"	"	Water & Truck
	Love Boyd & Co	"	"	"	3	"	"	"	All Rail
ock	C H Cobern	"	"	"	1	"	"	"	Water
	[illegible] & Brklyn Basket Co	"	"	Brooklyn	1	"	"	"	"
s Lots.	Fiol Bros	"	"	"	2	"	Brooklyn NY	"	New business
	[illegible] Co	Havana Cuba	"	Various	1	"	New York City	"	Water
orage	Garcia Sugar Co	"	"	Pittsburgh	1	"	"	Lake "	Water (Rail
	Stevens & Jerry	New Orleans La	"	Brooklyn	1	"	Hoboken NJ	Truck	New business
ger	Sam Davis	"	"	"	1	"	"	"	"
	S Blum & Sons	"	"	New York	1	"	New York City	"	Water & Truck
	Nicholson Cooperage	"	"	Matawan	2	"	Matawan NJ	"	All Rail
	[illegible] & J Whitehing	"	"	Mct. Aron	5	"	Hamilton Bermuda	Lighter	Water
ith	Allied Asphalt & Mineral	"	"	New Market NJ	1	"	Hoboken NJ	LV Am	Water & Rail
	[illegible]roonfield	"	"	New York	1	"	New York City	Truck	Water
	Cent. Paper & Bag	"	"	Plainfield NJ	2	"	"	"	Water & Truck
	Herbert Cato Co	"	"	N J Points	1	"	"	"	Water & Rail
	Plunkett Webster	"	"	New York	8	"	"	"	All Rail
					140				

572

TRAFFIC MOVING SOUTHBOUND VIA SEABOARD ORIGINATING AT HOBOKEN LOCALLY - SEPTEMBER 1933

...ity	Shipper	Origin	Destination	No. of Cars	Location	Original Pt. of Shipment	Actual Movement To Hoboken	How Moved From Hoboken To Seaboard
...ritting Oil	West Indies Oil Co	Hoboken	Havana Cuba	1	25 Broadway NY	Bayonne	Rail	Rail & Water
...ed Flour	Hall Trading Co	Java	New Orleans La	2	Java	Java	Import SS	Water
...r Oils	Natl Biscuit Co	Hoboken NJ	"	1	New York	New York	Truck	New business
...ckes	Chamberlain & Barclay	"	"	3	Cranbury Pa	Cranbury Pa	"	"
'	...nnett & Clayton	"	"	1	"	"	"	"
...ssenger	...Demodotto Inc	"	"	17	Hoboken NJ	Hoboken NJ	"	Water
...r	J F Trucking Inc	"	"	5	Brooklyn	Brooklyn	"	New business
...andise	Storch Trucking	"	"	6	New York	New York	"	Water
'	S T Tond Co	"	"	6	"	"	"	"
...ed Oil	Spencer Kellogg	"	"	1	Buffalo NY	Edgewater	Rail	Rail & Water
...tes	J H McCauley & Sons	"	Havana Cuba	15	Brooklyn NY	Brooklyn NJ	Truck	New business
'	Louis Rosenblum	"	"	3	New York	South Jersey	"	"
...ed	J L Ford Co	"	"	1	Wyandotte Mich	Wyandotte Mich	Rail	Rail & Water
...ts	Punch Dlvo Co.	Java	New Orleans	1	Java	Java	Import SS	Water
...r	"	Dutch East Indies	"	1	Batch D I	Batch D I	"	"
...r	"	"	"	12	"	"	"	"
...l	W V Mandel							
	Spool Cotton Co	Hoboken NJ	"	1	New York	(Newark NJ	Truck	
						(Providence RI	Water	Rail & Water
	Booth ... Shipping	...ritish East Indies	"	1	...ritish D I	...ritish D I	Import SS	Water
	"	"	"	1	"	"	"	"
...r	"	Far East	"	1	Far East	Far East	"	"
...ion Flour	"	"	"	1	"	"	"	"
...plies	"	"	"	1	"	"	"	"
...r	"	"	"	1	"	"	"	"
...Iron ...ore	Sayer, Inc	Hoboken NJ	"	1	New York	Newark NJ	Truck	Water
...Mustard	Preserves & Honey Inc	"	"	1	New York	New York	"	"
...Oil	Arc...er Chemicals	"	"	2	Edgewater NJ	Edgewater NJ	Rail	Rail & Water
	Lehman Brewery	"	"	1	Brooklyn NY	Brooklyn NY	Truck	New business
...r	...Mfg Co	Far East	"	2	Far East	Far East	Import SS	Water
...r	Barber SS Lines	"	"	1	"	"	"	"
...a	"	"	"	1	"	"	"	"
	Fier Bros	Hoboken NJ	"	1	Brooklyn	Brooklyn	Truck	New business
'	...ing Brewery	"	Houston Tex	2	"	"	"	"
...r	Furness ...ity Co	Far East	"	1	Far East	Far East	Import SS	...ater
				100				

TRAFFIC MOVING THROUGH VIA STATION DESTINED HOUSTON LOCALLY - SEPTEMBER 1933

COMMODITY	CONSIGNEE	ORIGIN	DESTINATION	NO. OF CARS	ADDRESS	FINAL DESTINATION	HOW MOVE	HOW MOVED PRIOR TO SEABOARD
lt	Jefferson Salt Co	Jefferson Is.La	Hoboken NJ	24	New York	Brooklyn	Lighter	Water
"	Lehigh Salt Co	"	"	10	"	Hoboken	"	New business
"	Chas Schnefer & Son	"	"	3	Brooklyn NY	Paterson NJ	Rail	Water & Rail
rapping Paper	Ribbon & Ticker Co	New Orleans La	"	1	Paterson NJ	"	Truck	Water & Truck
"	Deisler Deidmann	"	"	1	"	Belleville NJ	"	"
"	Reliance Paper & Twine	"	"	4	"	New York	"	New business
aper Bags	Bridgeport Paper Co	"	"	1	Bridgeport Ct	"	"	Water & Truck
"	Sanfior Inc	"	"	7	Jersey City	Jersey City	"	Coastwise & Truck
rbon Black	Binney & Smith	"	"	1	New York	New York	"	Water
ber	E E Sizer & Co	"	"	4	"	"	"	Water & Truck
"	F A Gordon & Co	"	"	1	"	Hot. Arch	"	Water
"	Halligan & McLennan	"	"	1	"	New York	"	All Rail
"	C F Fischer & Co	"	"	1	"	Hot. Arch	"	All Rail
"	C F Boyce Inc	"	"	2	"	Brooklyn	"	Water
Cases & Sets	Friol	"	"	1	Brooklyn	"	"	New business
ines	Vinn Cort Co	"	"	5	Russia	Export SS	Lighter	"
ined Sugar	Hershey Corp	Havana Cuba	"	4	Hershey Pa	Various	Storage	Water
ed Salted Hides	Lykes Bros	"	"	3	New York	Hot. Arch	Truck	Water & Truck
lt	San Jevis	New Orleans La	"	1	Union City NJ	Hoboken	"	New business
rbon Black	Kelly Springfield	"	"	4	Cumberland, Md	Cumberland Md	"	Water & Rail
per Bags	E Klein	"	"	2	Yonkers NY	Yonkers NY	"	Water & Truck
ber	Ferguson Bros	"	"	1	New York	Hoboken NJ	"	Water
"	May & Emanth Inc	"	"	1	"	Long Island	"	All Rail
al Fibre	Manson & Orth	Havana Cuba	"	1	"	New York	"	Water
ined Sugar	Sucrest Co	"	"	7	"	Various	Storage	"
ide Horns	Cock Trading Co	"	"	1	"	Export	Lighter	"
r Bags	C Greenfield	New Orleans La	"	1	"	New York	Truck	"
ing	Austin Nichols	"	"	1	Brooklyn	Brooklyn	"	"
ber	J E Dato & Co	"	"	1	New York	New Jersey Pts.	"	Water & Rail
on Eye	Orson Eye Co	"	"	2	"	New York	"	Rail
ttonseed Pitch	Allied Asphalt	"	"	1	"	New Market NJ	LV NJ	Water & Rail
ined Sugar	Garcia Sugars Corp	Havana Cuba	"	5	"	Pittsburgh Pa	Rail	"
sehold Goods	H E McKiernan	"	"	1	Hoboken NJ	New York	Truck	New business
ber	C T Williams	"	"	1	New York	"	"	Water
kles	Fienstein & Thompson	"	"	1	"	"	"	New business
r Bags	J Ginsberg	New Orleans La	"	1	"	"	"	"
ber	Love Boyd & Co	"	"	1	"	"	"	All Rail
r Bags	Union Bag & Paper	"	"	1	"	Hudson Falls NY	"	Water & Truck
sehold Goods	C D Quick	"	"	1	"	New York	"	New business
				110				

[fol. 575] EXHIBIT No. 16

Witness: Graham M. Brush

February 7, 1935.

Mr. J. M. Davis, President,
The Delaware, Lackawanna & Western Railroad Co.,
140 Cedar Street,
New York City.

DEAR MR. DAVIS:

I have been advised that the report and recommendations of the Special Traffic Committee, consisting of Messrs. Brister, Gray and Franklin, to the Presidents of the New York Harbor Lines have been submitted for consideration and action in the near future. This committee was appointed on October 19, 1933, to investigate traffic handled by Seatrain with a view toward determining the effect of Seatrain service on the Eastern Trunk Lines. At the request of this committee Seatrain turned over a detailed statement of traffic which it had handled in and out of New York during two thirty-day periods selected at random by the committee. The traffic handled by Seatrain in and out of New York during these periods totaled 984 cars.

No doubt you have received details with respect to gains and losses in traffic of the Eastern Trunk Lines due to Seatrain operation, but as the committee did not consider the effect of Seatrain service on the rail lines serving the Port of New Orleans I thought you might be interested in having a combined summary of the effect of Seatrain service on the railroads at each end of its line. This result is quite enlightening. You will, of course, understand that the classification of traffic is not that of our analysis but of the analysis of the committee applied to the southern roads. For example, one car diverted from the all-rail route is diverted both from the southern roads and the northern roads. On the other hand, a carload of traffic which has not moved heretofore in any route which was classified by the committee as new traffic for the rail lines has also been shown as new traffic for the southern roads if the car moved linehaul over such roads.

Cars handled by Seatrain in and out of New York for period, 984 cars.

Cars considered by committee, 767 cars.

Cars not considered by committee (cars handled by Eastern Railroads, other than New York Central, Erie and Pennsylvania), 217 cars.

Out of these 767 cars, 65 cars were found to have been diverted from the all-rail routes to the rail-water-rail (Seatrain) route, the New York Central, Pennsylvania or Erie having obtained a line haul to or from New York on 46 of the 65 cars and the Southern Roads having obtained a line haul to or from New Orleans on 53 of the 65 cars.

[fol. 576] Net Loss of Traffic diverted from All-Rail, by NYC-PRR-Erie (65 minus 46) 19 Cars, by Southern Roads (65 minus 53) 12 Cars.

Out of the 65 cars maximum which were classified as having been diverted from the all-rail routes, Seatrain traffic officials agreed as to 31, but disagreed as to 34 cars, some of the latter being classified by the railroad traffic officials as doubtful.

Out of the remaining 702 cars analyzed the committee found that Seatrain service had developed new rail traffic as follows:

Total New Rail Traffic Developed by Seatrain for NYC-PRR-Erie, 111 Cars, for Southern Roads, 113 Cars.

The cars of new traffic developed for the railroads by Seatrain were shown in two main groups:

(1) That diverted from inland waterways and tank steamers and moved by rail to and from the ports in connection with Seatrain service:

(2) That developed from new traffic created by Seatrain service:

New Rail Traffic Developed by Seatrain. Group 1. For NYC-PRR-Erie, 47 Cars, for Southern Roads, 16 Cars. Group 2. For NYC-PRR-Erie, 64 Cars, for Southern Roads, 97 Cars.

Note: In addition to the above cars of new traffic, 20 other cars were found to be new business created by Seatrain service, but which produced no rail haul for the Eastern roads, such coming from Cuba for local consumption at New York.

Presumably because of the great difficulty of ascertaining facts, no figures were compiled by the committee to show traffic *restored* to the rail lines by reason of Seatrain service which otherwise would have moved by truck and regular coastwise steamer.

Traffic Restored to Railroads Diverted from Trucks, ? Cars.

[fol. 577] It should likewise be pointed out that the new rail traffic developed does not include the new traffic for the Southern roads in connection with Seatrain's Cuban service between New Orleans and Havana, this study having been confined to traffic moving by Seatrain in and out of New York.

New Rail Traffic for Southern Roads Created by New Orleans-Havana Seatrain Service, ? Cars.

In our opinion the above results amply justify the statements which I made to the Harbor Line Presidents in October 1933, namely, that the Seatrain type of ship would develop far more traffic for the railroads than it would divert from them. Besides this traffic advantage, Seatrain service offers the railroads considerable economies in operation, such as reducing the cost of interchange between rail and water carriers and also reducing car service expense. The saving in the former is apparent, but I find there is still a misconception in the minds of certain railroad men regarding the car service feature. I shall not take your time in a lengthly analysis of this phase but merely wish to point out that the Car Service Division of the A. A. R. and all car service men with whom I have had a thorough discussion of this problem agree that material savings can be made by loading southern and southwestern cars with traffic to move by water, which cars are empty in the north and which cannot be routed back all-rail to the home road under load. Seatrain service enables these cars to be returned to the southern roads without wear and tear, without the cost of the empty haul and without the absorption of the per diem expense during the return empty movement.

As I pointed out to you in October 1933, there is a huge volume of traffic which for many years has moved by water between the North Atlantic Ports and the Gulf. So long as that traffic continues to move by water we are convinced

that the railroads will receive many benefits if such traffic is carried by Seatrain vessels. Over a long period of years this traffic, exclusive of coal, oil and other bulk commodities, averages three to five million tons per annum and is carried principally by the Morgan, Mallory and Southern Steamship Lines. The Eastern Trunk Lines are only interested in a minor part of this traffic for their all-rail routes because of low revenue. For example, the average revenue per ton mile for our service in 1934 on this traffic was 2.4 mills, on which we made a profit after all charges. It is because of low cost water transportation that manufacturing plants in the East are enabled to sell in competition with western manufacturers in the southwestern market. The records of the Commission, going back for many years, are most convincing on this point, which confirms our daily experience wherein we find the eastern manufacturers competing with the western manufacturers for business in the southwest. I mention this because it seems to me that the Eastern Trunk Lines are vitally interested in maintaining markets for the manufacturing plants which they serve, even if such markets are kept open by low cost water transportation which may theoretically compete with the all-rail routes but which actually do not compete with the all-rail routes in which the Eastern Trunk Lines are interested. The eastern roads not only receive the haul of the raw materials into these plants which are enabled to sell in the [fol. 578] southwest but are potential carriers of the manufactured product to the seaboard, particularly so if the goods are to move by Seatrain. For these reasons, I believe that the Eastern Trunk Lines are dependent upon continuation of low cost water transportation for a very considerable volume of traffic to and from manufacturing plants on their lines. I realize that the Eastern Trunk Lines have not pursued a policy based on this conception in the past and they may not agree with us for the future, but, in any event, whether or not it is to the best interests of the Eastern Trunk Lines that three to five million tons per annum should move by water between North Atlantic and Gulf Ports, I hope that you will agree that so long as such traffic does move it should move in the type of ship which will encourage traffic to move by rail to and from the ports. To carry out this policy I hope the Eastern Trunk Lines will grant permission to Seatrain to use their cars and with respect to other relationships we have asked that Seatrain

be treated the same as the Eastern Trunk Lines treat the other water carriers. We have sought no favors and do not intend to seek favors or special privileges. The Commission has decided that we are a common carrier by water and we only ask that the railroads treat us in the same manner and to the same extent as they treat our water line competitors.

Yours very truly, (Signed) Graham M. Brush, President.

GMB:HMD.

[fol. 579] EXHIBIT No. 17

Witness: Graham M. Brush

(Copy)

The Delaware, Lackawanna and Western Railroad Company, 140 Cedar Street, New York

J. M. Davis, President

February 27, 1935.

Mr. Graham M. Brush, President, Seatrain Lines, Inc., 39 Broadway, New York, N. Y.

DEAR MR. BRUSH:

I duly received your communication under date of February 7th, with reference to the report submitted recently by the Traffic Committee which conducted certain investigation and study respecting the matter of relations with Seatrain Lines and the Hoboken Manufacturers Railroad, pursuant to action resulting from the meeting of Presidents of New York Harbor Railroads held on October 19, 1933.

It is understood, I believe, that the position of the Lackawanna Railroad has been consistently in sympathy with your situation, and that we have been disposed to work with your organization, insofar as it has been possible to do so. In the further consideration of the matter, action by this Company will be in support of equitable determination on such basis.

Very truly yours, (Signed) J. M. Davis.

[fol. 580] EXHIBIT "18"

Witness: Graham M. Brush

Agreement made this 24th day of February, 1937 between Hoboken Manufacturers' Railroad Company, a corporation organized and existing under and pursuant to the laws of the State of New Jersey, hereinafter referred to as "Railroad", and Seatrain Lines, Inc., a corporation organized and existing under and pursuant to the laws of the State of Delaware, hereinafter referred to as "Seatrain";

Witnesseth:

Whereas Railroad operates a line of railroad along the water front of Hoboken, New Jersey, connecting with the line of Erie Railroad Company at Weehawken and serving various industries, team tracks and steamship piers; and

Whereas Railroad is lessee of a certain parcel of property described as Plot B in an indenture made the 19th day of June, 1906, between Railroad and Hoboken Land and Improvement Company, which Plot B includes land under and over water and a pier or so-called trestle located over a portion of the land under water; and

Whereas Railroad is the owner of a car-handling crane or elevator located on said Plot B, as well as certain locomotives, flat cars and freight house; and

Whereas Seatrain is the owner of cargo vessels and for the berthing of such vessels and the loading and discharging of cargo carried thereby has been using and desires to continue to use said trestle and the land under water or slip adjacent thereto; and

[fol. 581] Whereas Seatrain has been using and desires to continue to use certain rolling stock owned by Railroad, a portion of Railroad's freight house and the car handling crane;

Now, Therefore, in consideration of the mutual undertakings herein contained it is agreed by and between the parties hereto as follows:

1. Railroad leases to Seatrain for the term of this agreement the trestle on Plot B, including the tracks, fence and pipe lines thereon, together with the slip adjacent thereto with the privilege to Seatrain of berthing its vessels thereat, reserving to itself, however, the right to operate over the tracks on said trestle in handling freight to or from the

vessels of Seatrain and reserving also the right from time to time, but subject at all times to the convenience of Seatrain, to use said tracks when otherwise necessary for its own purposes to serve other parties including parties using Pier 16, and reserving also the right from time to time to berth or permit to berth in said slip lighters or other vessels when desired for the purposes of Railroad, but only at such times and in such manner as will in no way obstruct or interfere with the operations of Seatrain, either in berthing or in docking or undocking its own vessels or in berthing or docking or undocking lighters or other vessels incident to Seatrain's operations.

Railroad shall at its expense insure, repair and maintain at all times the premises leased to Seatrain in a condition suitable for the use thereof by the vessels of Seatrain and shall at its expense keep the slip dredged at all times, to a minimum depth of twenty-five feet at mean low water.

[fol. 582] As part of such lease, Railroad assigns to Seatrain, in so far as Seatrain's use of the property leased to it is concerned, any and all rights which Railroad may have under and pursuant to Railroad's leases from Hoboken Land and Improvement Company and Hoboken Railroad, Warehouse and Steamship Connecting Company, or pursuant to any other agreement or contract now or hereafter entered into with either of said parties or with any other party with respect to the free and unobstructed use of a right-of-way by water as a means of access to said slip, or in respect to any obligation to provide sufficient depth or area of water in such right-of-way for the safe navigation of the vessels of Seatrain or other vessels incident to Seatrain's operations on the said premises, and Railroad will at Seatrain's request, on Seatrain's undertaking to reimburse it for the expense thereof, take such action or initiate such proceedings, or permit Seatrain to do so in Seatrain's or Railroad's name, as may be necessary to enforce any or all of said rights.

Apart from and in addition to the rights so assigned, Railroad undertakes that so much of the aforesaid right of way as shall be needed by Seatrain to permit safe navigation of its vessels as a means of access to or egress from said slip or for other purposes in connection with its operations shall at all times be dredged to a minimum depth of 25 feet at mean low water; and in the event that Hoboken Land and Improvement Company or Hoboken Railroad, Warehouse

and Steamship Connecting Company shall fail or refuse to perform the necessary dredging for such purpose or it shall be determined that neither of them is under any obligation so to do, Railroad will perform such dredging at its expense, or upon its failure so to do, Seatrain may do so and Railroad will reimburse Seatrain for the expense thereof. In the event Railroad under such circumstances performs such [fol. 583] dredging at its expense, it may, notwithstanding the aforesaid assignment, maintain in its name any action against Hoboken Land and Improvement Company or Hoboken Railroad, Warehouse and Steamship Connecting Company which it may have for reimbursement of such expense or for damages for breach of the aforesaid leases or otherwise resulting from such failure.

Notwithstanding any of the provisions of the foregoing paragraph, Seatrain's right in the event of a default by Railroad on its undertaking with respect to the dredging of the right-of-way shall be limited to reimbursement of its own costs for performing such dredging and Railroad shall not be liable to Seatrain for any delay, damages or injury to it, its vessels or other vessels using said right-of-way or slip by reason of any failure to dredge either the right-of-way or slip to the extent above provided for. Nothing herein contained, however, shall be deemed to qualify or limit any right which Seatrain may have as against Hoboken Land and Improvement Company or Hoboken Railroad, Warehouse and Steamship Connecting Company under the assignment aforesaid nor be deemed to relieve Railroad of any liability to Seatrain resulting from the negligence of Railroad's agents or employees.

In consideration of the foregoing, Seatrain shall pay to Railroad for each year of the term of this lease an annual rental, payable monthly in approximately equal installments, which annual rental shall be in an amount equal to the total of the following items of cost incurred by Railroad or charged on its books for the preceding calendar year;

(a) All rentals paid by Railroad to its landlord upon the leased premises;

(b) All taxes and insurance, including public liability and workmen's compensation, if any, on or in connection [fol. 584] with the leased premises or the operation thereof;

(c) All depreciation on the leased premises;

(d) All expenses for the repair and maintenance of the leased property;

(e) All expenses for dredging incurred or to be incurred by Railroad in dredging the slip and the right-of-way affording ingress to and egress therefrom and not otherwise reimbursed to Railroad; and

(f) Six per cent. (6%) upon Railroad's investment in any and all of said properties owned by it in fee simple or in any improvements made by it upon the leased premises.

For the first year of the term of the lease, it is agreed that the annual rental so computed shall be $19,668.07.

2. Railroad grants to Seatrain the exclusive use of the crane or car elevator, including transformers, power lines and other appurtenances, constructed on said Plot B over said trestle for the handling of cars and other goods between said trestle and the vessels of Seatrain or lighters or other vessels which Seatrain may from time to time cause or permit to be berthed at said trestle or for any and all other purposes. Railroad will insure and maintain said crane and appurtenances and keep the same in good repair and at all times suitable for use for the purposes aforesaid.

It is understood between the parties hereto that Seatrain shall contract for and bear the expense of any and all power used in connection with said crane or for any other purpose incident to Seatrain's operations or use of the premises leased by it.

In consideration of the foregoing, Seatrain shall pay to Railroad during the term of this lease as rental for the [fol. 585] properties described in this sub-division 2 of this agreement an annual rental, payable monthly in equal or approximately equal installments, which annual rental shall be in an amount equal to the total of the following items of cost incurred by Railroad or charged on its books for the previous calendar year;

(a) All expenses for the maintenance and repair of said crane and its appurtenances;

(b) All depreciation thereon;

(c) Any and all taxes and insurance thereon, including public liability and workmen's compensation insurance; and

(d) Six per cent. (6%) upon Railroad's investment therein and on any additions or improvements thereto.

For the first year of the term of this lease, it is agreed that the annual rental so computed shall be $13,219.16.

3. Railroad leases to Seatrain seven flat cars for use by Seatrain in storing cradles of Seatrain's vessels when said vessels are in port, Railroad reserving the right to use said flat cars when not required by Seatrain as provided above for such purposes as Railroad may desire.

In consideration of the foregoing, Seatrain shall pay to Railroad during the term of this lease as rental for said cars or any substitutes for or replacements thereof an annual rental, payable monthly in equal or approximately equal installments, which annual rental shall be in an amount equal to the total of the following items of cost incurred by Railroad or charged on its books for the previous calendar year:

[fol. 586] (a) All expenses for the maintenance and repair of said cars;

(b) All depreciation thereon;

(c) Any and all taxes and insurance thereon or incidental to the ownership or operation thereof, including public liability and workmen's compensation insurance; and

(d) Six per cent (6%) of the net book value of said cars.

For the first year of the term of this lease, it is agreed that the annual rental so computed shall be $604.59.

4. In case of any dispute as to the amounts of any of the items on which the rental provided for in the three foregoing paragraphs is to be computed, the books of Railroad shall be conclusive.

5. If and when Seatrain may from time to time have occasion to handle for its own account freight between its vessels and lighters berthed at said trestle, which freight is to be transported or has been transported by Seatrain in freight cars or otherwise and has been brought to or is to be taken from said trestle by such lighters and for this purpose may have need of means to move said freight cars

from place to place on said trestle and to switch and sort said cars, Railroad will, upon reasonable request, lease to Seatrain such locomotives or other motive power as Seatrain may require for such purposes, furnishing the necessary crews, fuel, supplies and other equipment for the operation of the same, such operation, however, to be entirely at the direction and resposibility of Seatrain. As rental therefor and to avoid the necessity of keeping records of the lengths [fol. 587] of time such locomotives or other motive power are leased to and used by Seatrain or of the quantities of fuel, supplies or other equipment used, Seatrain will pay to Railroad $2.50 for each loaded car containing such freight handled by Seatrain with such locomotives or other motive power between its vessels and said lighters; provided, however, that if Railroad in order to furnish Seatrain with a locomotive or other motive power when requested is compelled itself to lease the same from another railroad, the total rental paid by Seatrain to Railroad therefor shall be not less than the rental which Railroad is itself obligated to pay for such locomotive plus the cost of any fuel or materials used and not covered by such rental.

When Seatrain from time to time may have occasion in handling said cars containing said freight to use a track or tracks in the supporting yard of said trestle in order to handle said cars more efficiently, Railroad grants to Seatrain the right when necessary to operate over such tracks in the handling of such cars in consideration of Seatrain granting to Railroad the right to operate over the tracks on said trestle in the handling of its freight as provided in Article 1. It is understood between the parties hereto that while such lighterage freight is being handled between Seatrain's vessels said freight and said cars shall be deemed to be solely in the possession of Seatrain and that Railroad is not a carrier of such freight or such cars and is not responsible in any way therefor.

If, in connection with said freight handled between Seatrain's vessels and lighters, it shall be necessary to move certain freight in cars beyond the supporting yard for inspection or for any other cause, Railroad shall assess its [fol. 588] tariff rates for such movement.

6. Railroad leases to Seatrain an area of one hundred and eighty (180) square feet in its freight house located at Fifth Street, in which area Seatrain may hold freight

for or from its vessels, it being understood that Railroad is neither responsible for the handling of such freight or for any loss, damage or pilferage of or to such freight and as between Railroad and Seatrain such freight shall be deemed to be solely in the possession of Seatrain. In consideration for said storage space Seatrain shall pay Railroad during the term of this lease an annual rental of $1.00 per square foot, payable monthly.

7. With respect to freight transported or to be transported by Railroad at rates which do not include compensation to Railroad and/or its rail connections for loading such freight into or on or unloading from railroad cars, the point or points of delivery of such freight by Railroad to Seatrain or receipt thereof by Railroad from Seatrain shall be the same point or points that freight is delivered by railroad to Seatrain or received by Railroad from Seatrain when transported or to be transported by Railroad at rates which include compensation to Railroad and/or its rail connections for loading such freight into or on or unloading from railroad cars.

8. This agreement shall supersede any prior agreement or arrangement between the parties hereto with reference to the subject matter hereof.

9. This agreement shall become effective on and after March 1, 1937, and shall remain in effect for a period of three years thereafter, subject, however, to the right of [fol. 589] either party on thirty (30) days' notice in writing to the other to cancel the same.

10. This agreement shall be binding on the successors and assigns of the parties hereto but shall not be assigned by either party without the consent of the other.

In Witness Whereof the parties hereto have caused this contract to be executed by their duly authorized officers upon the day and year first above named.

Hoboken Manufacturers' Railroad Company, by George S. Amory, its Vice-President. Seatrain Lines, Inc., by Joseph Hodgson, its Vice-President.

[fols. 589a-589c] Exhibit 19 omitted. Printed side page 63 ante.

l. 590] EXHIBIT 20

Witness: Graham M. Brush

Agreement made this 26th day of February 1937, between boken Manufacturers' Railroad Company, a corporation ganized and existing under and pursuant to the laws of State of New Jersey, hereinafter referred to as "Rail-d" and Ryan Stevedoring Co., Inc., a corporation organ-d and existing under and pursuant to the laws of the te of Alabama, hereinafter referred to as "contractor".

Witnesseth:

Whereas, Railroad operates a line of railroad along the terfront of Hoboken, New Jersey, connecting with the e of Erie Railroad at Weehawken and serving various ustries, team trucks and steamship piers; and

Whereas, Contractor has for some time past performed, Agent for Railroad, certain work and services in connec-n with the delivery and receipt of freight to and from n-Atlantic Steamship Corporation, hereinafter referred as "Steamship" whose vessels berth at piers served by ilroad; and

Whereas, pursuant to the provisions of various tariffs olished and filed with the Interstate Commerce Commis-n either by Railroad individually or by or on behalf of ilroad's trunk line connections and participated in by ilroad, it is Railroad's obligation and undertaking with pect to certain freight generally described as import, port, coastwise, intercoastal or lighterage free freight ivered to and received from vessels of steamship lines at w York Harbor, including the vessels of Steamship, to form certain services, in the nature of terminal services distinguished from Railroad's switching services, and do so without additional charge at the rates provided in h tariffs, such rates including compensation to Railroad to Railroad and its trunk line connections for its obliga-n and undertaking in the performance of such terminal vices, which terminal services include the holding of ight for the free time and beyond as specified in such l. 591] tariffs, loading such freight into or on railroad s and unloading such freight from railroad cars and, in nection with such loading, stowing and bracing the ight as necessary and moving the freight in cars or other-

wise between Railroad's line and the stringpieces or platforms of the vessels' berths, all such service to be performed in such a way as to make delivery thereof to such vessels in the order and at the times called for by the steamship line and to receive such freight as and when discharged from such vessels at such points; and

Whereas, with respect to such freight, and such freight only, transported by Railroad at such rates and delivered to or received from Steamship, Contractor, if advised by Railroad that such freight is to be handled, is ready and willing, but only on the terms hereinafter stated, to perform such terminal services as agent of Railroad to the extent, in the manner and on the terms and conditions hereinafter provided:

Now, therefore, it is mutually agreed by and between the parties hereto as follows:

1. With respect to such freight transported by Railroad at such rates to be delivered to vessels of Steamship, Railroad after holding the freight in accordance with its tariffs and when ordered to make delivery thereof to vessels of Steamship will place cars containing such freight in the order and at the time requested at such point or points nearest the stringpiece or platform of Steamship's pier or elsewhere as may from time to time be mutually agreed upon and when so placed freight in such cars will as between Railroad and Contractor be at the risk and responsibility of Contractor, but only to the extent provided in paragraph 6 hereof. Contractor will thereafter promptly perform any and all services or operations to complete Railroad's obligations under its tariffs to deliver such freight to Steamship's vessels, including any and all obligations of Railroad under its tariffs to the shipper, consignee or owner of such freight with respect thereto, combining at Contractor's election such services or operations with any operations of loading such freight into vessels of Steamship.

[fol. 592] 2. With respect to such freight to be received by Railroad from Steamship and to be transported by Railroad at such rates, when Railroad is notified by the Contractor that cars containing such freight are loaded at the same point or points as defined or agreed upon in paragraph 1 hereof, such freight in such cars will as between Railroad and Contractor be at the risk and responsibility of Railroad. Contractor will promptly perform any and all services or

erations to complete Railroad's obligations under its tar-
s to receive such freight from the vessels of Steamship,
luding any and all obligations of Railroad to the shipper,
nsignee or owner of such freight with respect thereto prior
the placement of the cars containing such freight at such
int or points, including loading the freight into cars, brac-
g and blocking the freight to prevent movement and dam-
e in transit, using steel banding or blocking where neces-
ry and lining cars to protect the freight, combining at
ntractor's elections such services or operations with any
erations of discharging such freight from vessels of
eamship.

3. Railroad will, when, as and if required, promptly place
pty cars at the designated points as provided in para-
aph 1 hereof and will accept empty cars released by Con-
actor at such points when, as and if released to it by
ntractor.

4. Railroad will at its expense do any and all checking
ident to making delivery and taking receipt of such
ight from Steamship.

5. Contractor will at its expense recooper any such
ight where this is necessary due to damage caused by it,
agents or contractors.

6. Contractor will indemnify and save harmless Railroad
om any and all claims for loss, damage or injury of or to
ch freight, to loaded or empty cars, to persons and to prop-
ty due to Contractor's negligence or that of its employees,
ents or contractors in the performance by Contractor of
y obligation or undertaking of Railroad in connection with
ol. 593] such freight. Contractor shall furnish Railroad
th a certificate or certificates or other evidence satisfac-
ry to Railroad showing that Contractor has duly complied
th all legal requirements in respect of Federal and State
orkmen's Compensation Laws.

7. Contractor will furnish at its expense any and all labor,
luding overtime if for Contractor's convenience, any and
supplies and materials except as may be provided other-
se herein, and any and all equipment of whatever nature,
luding gear, tractors, trailers, cranes, hoists, booms,
nches or any other equipment necessary to perform any
d all services or operations devolving upon it under this

agreement, and will assume all costs of any special designs, arrangements or equipment of piers, terminals or vessels or any patented device used by it or others in performing any part of or all of said services or operations.

8. Railroad will at its expense supply all materials required for bracing, blocking and banding such freight and for lining cars containing such freight.

9. For the aforesaid undertakings and for the performance of the services aforesaid Railroad will pay Contractor seventy cents (70¢) per ton of 2,000 pounds upon each and every ton of such freight interchanged between Railroad and Steamship and transported or to be transported by Railroad under rates which include compensation to Railroad and/or its connections for loading such freight on or unloading such freight from railroad cars and Railroad will pay Contractor for actual overtime incurred by Contractor at Railroad's request. If there should be any increase or decrease in the scale of longshoremen's wages from those in effect on February 1, 1937, the percentage of increase or decrease shall be added to the percentage of labor costs making up the rate of 70¢ per ton and for overtime the overtime rates of the new wage scale shall apply.

10. This agreement shall become effective on and after March 1, 1937, and shall remain in effect for a period of three [fol. 594] years thereafter, subject, however, to the right of either party on thirty days' notice in writing to the other to cancel the same.

11. This agreement shall be binding on the successors and assigns of the parties hereto but shall not be assigned by either party without the consent of the other.

In Witness Whereof the parties hereto have caused this agreement to be signed in their respective names under their respective corporate seals duly attested by their respective officers thereunto duly authorized, as of the day and year first above written.

Hoboken Manufacturers' Railroad Company, by Graham M. Brush, President.

Attest: Geo. H. Hobbs, Secretary.

Ryan Stevedoring Co., Inc., By E. A. Roberts, Vice-President.

Attest: Wm. Staten, Secretary.

[fol. 595] EXHIBIT 21

Witness: Graham M. Brush

Agreement made this 18th day of February 1937, between Hoboken Manufacturers' Railroad Company, a corporation organized and existing under and pursuant to the laws of the State of New Jersey, hereinafter referred to as "Railroad", and The Jarka Corporation, a corporation organized and existing under and pursuant to the laws of the State of Delaware, hereinafter referred to as "Contractor".

Witnesseth:

Whereas, Railroad operates a line of railroad along the waterfront of Hoboken, New Jersey, connecting with the line of Erie Railroad at Weehawken and serving various industries, team tracks and steamship piers; and

Whereas, Contractor has for some time past performed, as Agent for Railroad, certain work and services in connection with the delivery and receipt of freight to and from Holland-America Line, hereinafter referred to as "Steamship", whose vessels berth at piers served by Railroad; and

Whereas, pursuant to the provisions of various tariffs published and filed with the Interstate Commerce Commission either by Railroad individually or by or on behalf of Railroad's trunk line connections and participated in by Railroad, it is Railroad's obligation and undertaking with respect to certain freight generally described as import, export, coastwise, intercoastal or lighterage free freight delivered to and received from vessels of steamship lines at New York Harbor, including the vessels of Steamship, to perform certain services, in the nature of terminal services as distinguished from Railroad's switching services, and to do so without additional charge at the rates provided in such tariffs, such rates including compensation to Railroad or to Railroad and its trunk line connections for its obligation and undertaking in the performance of such terminal services, which terminal services include the holding of freight for the free time and beyond as specified in such [fol. 596] tariffs, loading such freight into or on railroad cars and unloading such freight from railroad cars and, in connection with such loading, stowing and bracing the freight as necessary and moving the freight in cars or otherwise between Railroad's line and the stringpieces or platforms of the vessels' berths, all such service to be performed in

such a way as to make delivery thereof to such vessels in the order and at the times called for by the steamship line and to receive such freight as and when discharged from such vessels at such points; and

Whereas, with respect to such freight, and such freight only, transported by Railroad at such rates and delivered to or received from Steamship, Contractor, if advised by Railroad that such freight is to be handled, is ready and willing, but only on the terms hereinafter stated, to perform such terminal services as agent of Railroad to the extent, in the manner and on the terms and conditions hereinafter provided:

Now, Therefore, it is mutually agreed by and between the parties hereto as follows:

1. With respect to such freight transported by Railroad at such rates to be delivered to vessels of Steamship, Railroad after holding the freight in accordance with its tariffs and when ordered to make delivery thereof to vessels of Steamship will place cars containing such freight in the order and at the time requested at such point or points nearest the stringpiece or platform of Steamship's pier or elsewhere as may from time to time be mutually agreed upon and when so placed freight in such cars will as between Railroad and Contractor be at the risk and responsibility of Contractor, but only to the extent provided in paragraph 6 hereof. Contractor will thereafter promptly perform any and all services or operations to complete Railroad's obligations under its tariffs to deliver such freight to Steamship's vessels, including any and all obligations of Railroad under its tariffs to the shipper, consignee or owner of such freight with respect thereto, combining at Contractor's election such services or operations with any operations of loading such freight into vessels of Steamship.

[fol. 597] 2. With respect to such freight to be received by Railroad from Steamship and to be transported by Railroad at such rates, when Railroad is notified by the Contractor that cars containing such freight are loaded at the same point or points as defined or agreed upon in paragraph 1 hereof, such freight in such cars will as between Railroad and Contractor be at the risk and responsibility of Railroad. Contractor will promptly perform any and all services or operations to complete Railroad's obligations under its tariffs to receive such freight from the vessels of Steam-

ship, including any and all obligations of Railroad to the shipper, consignee or owner of such freight with respect thereto prior to the placement of the cars containing such freight at such point or points, including loading the freight into cars, bracing and blocking the freight to prevent movement and damage in transit, using steel banding or blocking where necessary and lining cars to protect the freight, combining at Contractor's election such services or operations with any operations of discharging such freight from vessels of Steamship.

3. Railroad will, when, as and if required, promptly place empty cars at the designated points as provided in paragraph 1 hereof and will accept empty cars released by Contractor at such points when, as and if released to it by Contractor.

4. Railroad will at its expense do any and all checking incident to making delivery and taking receipt of such freight from Steamship.

5. Contractor will at its expense recooper any such freight where this is necessary due to damage caused by it, its agents or contractors.

6. Contractor will indemnify and save harmless Railroad from any and all claims for loss, damage or injury of or to such freight, to loaded or empty cars, to persons and to property due to Contractor's negligence or that of its employees, agents or contractors in the performance by Contractor of any obligation or undertaking of Railroad in con-[fol. 598] nection with such freight. Contractor shall furnish Railroad with a certificate or certificates or other evidence satisfactory to Railroad showing that Contractor has duly complied with all legal requirements in respect of Federal and State Workmen's Compensation Laws.

7. Contractor will furnish at its expense any and all labor, including overtime if for Contractor's convenience, any and all supplies and materials except as may be provided otherwise herein, and any and all equipment of whatever nature, including gear, tractors, trailers, cranes, hoists, booms, winches, or any other equipment necessary to perform any and all services or operations devolving upon it under this agreement, and will assume all costs of any special designs, arrangements or equipment of piers, terminals or vessels or any patented device used by it or

others in performing any part of or all of said services or operations.

8. Railroad will at its expense supply all materials required for bracing, blocking and banding such freight and for lining cars containing such freight.

9. For the aforesaid undertakings and for the performance of the services aforesaid Railroad will pay Contractor sixty-nine cents (69¢) per ton of 2,000 pounds upon each and every ton of such freight interchanged between Railroad and Steamship and transported or to be transported by Railroad under rates which include compensation to Railroad and/or its connections for loading such freight on or unloading such freight from railroad cars and Railroad will pay Contractor for actual overtime incurred by Contractor at Railroad's request. If there should be any increase or decrease in the scale of longshoremen's wages from those in effect on February 1, 1937, the percentage of increase or decrease shall be added to the percentage of labor costs making up the rate of 69¢ per ton and for overtime the overtime rates of the new wage scale shall apply.

10. This agreement shall become effective on and after March 1, 1937, and shall remain in effect for a period of [fol. 599] three years thereafter, subject, however, to the right of either party on thirty days' notice in writing to the other to cancel the same.

11. This agreement shall be binding on the successors and assigns of the parties hereto but shall not be assigned by either party without the consent of the other.

In Witness Whereof the parties hereto have caused this agreement to be signed in their respective names under their respective corporate seals duly attested by their respective officers thereunto duly authorized, as of the day and year first above written.

Hoboken Manufacturers' Railroad Company, by Graham M. Brush, President.

Attest: Geo. H. Hobbs, Secretary.

The Jarka Corporation, by F. Jarka, President.

Attest: Frederick H. Stokes, Secretary.

(Here follow Exhibit No. 22, 23, and Schedule 1-2, folios 600-603)

[fol. 600] EXHIBIT No. 22—WITNESS: GRAHAM M. BRUSH

Hoboken Manufacturers Railroad Company Income Statement—Year 1936

	As Per Books		Adjusted by Elimination of Items Applicable to Prior Years and Including 1937 Items Applicable to 1936	
Railway Operating Revenue				
Seatrain—Trunk Line	$188,237.32	(See Note 2)	$188,237.32	
(See Note 1) (Carload freight only)				
Less Write Down	42,251.33	(See Note 3)	42,251.33	
	145,985.99		145,985.99	
Seatrain C/L—Local	111,628.56	(See Note 4)	111,628.56	
(See Note 1) Seatrain L/C/L—Local	11,652.67	(See Note 5)	11,652.67	
Seatrain—Lighterage	11,255.29	(See Note 6)	11,255.29	
Total Seatrain	280,522.51		280,522.51	
(See Note 1) Other Traffic	110,987.69	(See Note 7)	110,987.69	
Emergency Charges	4,326.93		13,083.68	(See Note 8)
Total	395,837.13		404,593.88	
Incidentals	12,515.21		12,515.21	
Railway Operating Revenue	$408,352.34		$417,109.09	
Railway Operating Expenses:				
Maintenance of Way & Structures	23,692.98		23,692.98	
Maintenance of Equipment	11,642.68		11,642.68	
Traffic	13,056.58		13,056.58	
Transportation	232,464.88		232,464.88	
General	24,106.95		24,106.95	
	304,964.07		304,964.07	
Net Revenue from Railway Operation	$103,388.27		$112,145.02	
Railway Tax Accruals	45,186.87		43,371.00	(See Note 9)
	58,201.40		68,774.02	
Rent Income:				
Rent from Locomotive	227.40		227.40	
Rent from Work Equipment	101.52		101.52	
	328.92		328.92	
Hire of Freight Cars	3,827.51		3,827.51	
Rent for Locomotive	162.00		162.00	
	3,989.51		3,989.51	
Net Rents	3,660.59		3,660.59	
Net Railway Operating Income	$54,540.81		$65,113.43	
Other Income:				
Miscellaneous Rent Income	8,129.16		8,129.16	
Misc. Non-Operating Physical Property	866.20		866.20	
	8,995.36		8,995.36	
Total Income	$63,536.17		$74,108.79	
Miscellaneous Deductions from Income:				
Miscellaneous Rents	11,870.42		11,870.42	
Income Available for Fixed Charges	$51,665.75		$62,238.37	
Fixed Charges:				
Rent for Leased Road and Equipment	27,861.14		29,604.79	(See Note 10)
Interest on Funded Debt	25,048.26		25,048.26	
Interest on Unfunded Debt	731.63	(See Note 11)	76.55	(See Note 12)
	52,177.77		54,729.60	
Net Income	$512.02	Deficit	$7,508.77	Profit

Note 1: Trunk Line L. C. L. traffic moving in connection with Seatrain is shown in Other Traffic because Hoboken collects $1.45 per ton from the Trunk Lines and another $1.45 per ton from Seatrain, these being two separate movements and handlings.

Note 2: Hoboken charged the Trunk Lines $1.00 per ton on all Seatrain carload traffic interchanged with the Trunk Lines except on certain cars which were actually unloaded or loaded, the agreed division of $1.35 per ton being charged on such traffic, some railroads paying the $1.35 per ton, others refusing. Where $1.00 per ton was charged the Trunk Lines paid only 60¢ per ton.

Note 3: The failure of the Hoboken and the Trunk Lines to agree on divisions in connection with Seatrain traffic resulted in the Hoboken accumulating in its Revenue and in its Defefred Asset Accounts such large sums that, upon authority of the Directors, a reserve of 25¢ per ton was set up on such traffic pending a final determination as to the proper division for Hoboken.

Note 4: Hoboken charged Seatrain and collected $1.00 per ton on all carload traffic which Hoboken handled to or from points local on its line moving via Seatrain.

Note 5: Hoboken charged Seatrain and collected $1.45 per ton on all L. C. L. traffic moving via Seatrain.

Note 6: Hoboken charged Seatrain and collected 40¢ per ton on cars moved between Seatrain vessels and lighters at Seatrain's berth. This payment was solely for the use of a locomotive and crew moving such cars for the account of Seatrain. Hoboken as a carrier did not handle such traffic.

Note 7: This Revenue is revenue earned by the Hoboken on all traffic other than Seatrain traffic. Included in this account is Revenue from movements between points local on the Line of the Hoboken of $1,941.20, the balance being Hoboken's allowances from the Trunk Lines on Trunk Line traffic other than Seatrain traffic.

Note 8: The adjustment of $8,756.75 in this account is Emergency Charges (Ex Parte 103 and 115) credited in 1937 but applicable to the year 1936.

Note 9: The net adjustment of $1,815.87 in this account is made up as follows:

Refund in 1937—of 1936 Real Estate Taxes	−673.81
Cancellation 1937—of Carriers Retirement Tax accrued in 1936	−3,122.24
Refund in 1936—of 1935 Real Estate Taxes	+584.49
Cancellation in 1936—of 1933 Real Estate Taxes under appeal	+2,562.66
1935 Federal Income Tax set up in 1936	−57.89
1934 Federal Income Tax Deficiency set up in 1936	−1,109.89
	−1,815.87

Note 10: The net adjustment of $1,743.65 in this account is made up as follows:

Credited in 1937—Excess Tonnage Adjustment-Period ending June 1936	−450.00
Credited in 1936—Excess Tonnage Adjustment—Seatrain Lighterage Freight Prior Years	+2,108.54
Credited in 1936—Over-accrual of 1935 Income Tax Rental—Hoboken Railroad Warehouse & Steamship Connecting Company	+85.11
	+1,743.65

Note 11: This is a deduction. The sum of $1,284.02 was credited to this account by reason of the cancellation of interest accrued to December 1936 on unpaid City Taxes for the year 1933 under appeal.

Note 12: The net adjustment of $655.08 in this account is made up as follows:

Interest on 1934 Federal Income Deficiency—Applicable to Prior to 1936	−27.95
Credited in 1936—Interest on 1933 Taxes Appealed—Applicable to Prior to 1936	+836.13

[fol. 601]

EXHIBIT No. 23—WITNESS: GRAHAM M. BRUSH

Hoboken Manufacturers Railroad Company
Income Statement—Year 1937

			As per Books		Adjusted by Elimination of Items Applicable to Prior Years		Adjusted by Elimination of Items Applicable to Other Years Operations and Also to Basis of Original Contract with Seatrain Lines, Inc.	
Railway Operating Revenue								
	Seatrain—Trunk lines	2 months	$35,311.72	(See Note 2)	$35,311.72		$35,311.72	
(See Note 1)	(Carload freight only)	10 months	152,609.19	(See Note 2)	152,609.19		163,699.00	(See Note 11)
			187,920.91		187,920.91		199,010.72	
	Less—Write down		48,527.95	(See Note 3)	48,527.95		46,146.58	(See Note 22)
			139,392.96		139,392.96		152,864.14	
	Seatrain—C/L Local	2 months	19,272.43	(See Note 4)	19,272.43		19,272.43	
		10 months	78,248.51	(See Note 4)	78,248.51		81,048.08	(See Note 13)
(See Note 1)	Seatrain—L/C/L Local	2 months	1,895.03	(See Note 5)	1,895.03		1,895.03	
		10 months	10,646.54		10,646.54		10,646.54	
	Seatrain—Lighterage	2 months	1,954.50	(See Note 6)	1,954.50		1,954.50	
		10 months	1,196.99	(See Note 6)	1,196.99		6,957.99	(See Note 14)
	Total Seatrain		252,606.96		252,606.96		274,638.71	
(See Note 1)	Other Traffic	12 months	116,501.34	(See Note 7)	116,501.34		116,501.34	
	Emergency charges		24,586.58		.....	(See Note 8)	.....	
	Total switching charges		393,694.88		369,108.30		391,140.05	
	Incidentals		14,606.86		14,606.86		14,606.86	
	Railway operating revenue		$408,301.74		$383,715.16		$405,746.91	
Railway operating expenses:								
	Maintenance of way & structures		19,895.00		19,895.00		20,325.09	(See Note 15)
	Maintenance of equipment		14,374.95		14,347.95		13,599.05	(See Note 15)
	Traffic		13,576.27		13,576.27		13,576.27	
	Transportation		237,546.95		237,546.95		245,308.06	(See Note 15)
	General		23,727.97		23,727.97		23,727.97	
			$309,121.14		$309,121.14		$316,536.44	
	Net revenue from railway operations		99,180.60		74,591.02		89,210.47	
	Railway tax accruals		46,455.03		50,251.12	(See Note 9)	51,357.62	(See Note 15)
			52,725.57		24,342.90		37,852.85	
Rent income:								
	Rent from locomotive		37.90		37.90		227.40	(See Note 15)
	Rent from work equipment		520.72		520.72		101.52	(See Note 15)
			558.62		558.62		328.92	
	Hire of freight cars		10,886.13		10,886.13		10,886.13	
	Rent for locomotives		1,139.54		1,139.54		1,139.54	
			12,025.67		12,025.67		12,025.67	

Rent income:				
Rent from locomotive	37.90	37.90	227.40	(See Note 15)
Rent from work equipment	520.72	520.72	101.52	(See Note 15)
	558.62	558.62	328.92	
Hire of freight cars	10,886.13	10,886.13	10,886.13	
Rent for locomotives	1,139.54	1,139.54	1,139.54	
	12,025.67	12,025.67	12,025.67	
Net rents	11,467.05	11,467.05	11,696.75	
Net railway operating income	$41,258.52	$12,875.85	$26,156.10	
Other income:				
Miscellaneous rent income	7,546.26	7,546.26	8,129.16	(See Note 15)
Misc. Non-operating physical property	866.20	866.20	866.20	
	8,412.46	8,412.46	8,995.36	
Total income	$49,670.98	$21,288.31	$35,151.46	
Miscellaneous deductions from income:				
Miscellaneous rents	12,445.72	12,445.72	11,869.42	(See Note 15)
Income available for fixed charges	37,225.26	8,842.59	23,282.04	
Fixed charges:				
Rent for leased road and equipment	$33,654.90	$34,104.90 (See Note 10)	$34,104.90	
Interest on funded debt	24,505.80	24,505.80	24,505.80	
Interest on unfunded debt	539.16	539.16	539.16	
	58,699.86	59,149.86	59,149.86	
Net income	$21,474.60 Deficit	$50,307.27 Deficit	$35,867.82 Deficit	

Note 1: Trunk Line L. C. L. traffic moving in connection with Seatrain is shown in Other Traffic because Hoboken collects $1.45 per ton from the Trunk Lines and another $1.45 per ton from Seatrain, there being two separate movements and handlings.

Note 2: From October 1932 to March 1, 1937 Hoboken charged the Trunk Lines $1.00 per ton on all Seatrain carload traffic interchanged with the Trunk Lines except on certain cars which were actually unloaded or loaded, the agreed division of $1.35 per ton being charged on such traffic, some railroads paying, others refusing. Commencing March 1, 1937 Hoboken has charged the Trunk Lines the same rates per ton on all Seatrain traffic as it would have charged if the traffic had moved via some other water line, namely, $1.35 per ton on lighterage free traffic and 60¢ per ton on non-lighterage free traffic. Revenues have therefore been set up on the basis of two months and ten months as shown.

Note 3: The failure of the Hoboken and the Trunk Lines to agree on divisions in connection with Seatrain traffic resulted in the Hoboken accumulating in its Revenue and in its Deferred Asset Accounts such large sums that, upon authority of the Directors, a reserve of 25¢ per ton was set up on such traffic for the first two months of the year, the same as in prior years, and a reserve of 60¢ per ton was set up on Seatrain lighterage-free traffic for the last ten months of the year, pending a final determination as to the proper divisions for Hoboken.

fol. 602

SCHEDULE 1

Hoboken Manufacturers Railroad Company
Comparative Statement of Rental Contracts Between Hoboken Manufacturers Railroad Company and Seatrain Lines, Inc.
Years 1936 and 1937

	Original Contract 1936			New Contract for 12 Month Period			Actual Charges to Seatrain for 1937 Old and New Contracts			
	Proportion of Cost Charged Seatrain	Charged to Seatrain		Proportion of Cost Charged Seatrain	Charged to Seatrain		2 Months (Old)		10 Months (New)	Total
Trestle, Berth and Crane										
Rent—Land and Slip	75%		$7,306.08			$6,614.48		$1,217.68	$5,512.10	$6,729.78
Taxes										
Land and Slip	75%	$5,269.50			$5,763.75		$878.25		$4,803.10	
Old Trestle	75%	421.58		100%	190.80		20.26		159.00	
New Additions to Trestle	75%	1,139.32		100%	1,627.88		189.88		1,356.60	
Chain Link Fence	75%	42.05		100%	66.00		7.00		55.00	
Oil and Water Line	75%	14.75		100%	32.05		2.46		26.70	
Crane	100%	2,723.49		100%	2,978.77		453.92		2,482.30	
Crane Foundation	100%	523.52		100%	615.90		87.26		513.25	
Transformer	100%	29.31		100%	34.50		4.89		28.75	
			9,863.52			11,309.65		1,643.92	9,424.70	11,068.62
Return on Investment (6% on book value less depreciation)										
Old Trestle	75%	674.63		100%	453.80		112.44		378.19	
New Additions to Trestle	75%	522.77		100%	606.42		87.12		505.35	
Moving Bridge	75%	164.35		100%	219.14		27.40		182.62	
Trestle and Yard Tracks	75%	434.61		100%			72.44			
Dredging	75%	1,107.86		100%	1,477.15		184.64		1,230.96	
Chain Link Fence	75%	87.55		100%	97.76		14.60		81.46	
Sheet Piling	75%	319.78		100%	370.94		53.30		309.12	
Oil and Water Line	75%	42.51		100%	50.10		7.08		41.75	
Crane	100%	3,818.21		100%	3,321.84		636.36		2,768.20	
Crane Foundation	100%	895.88		100%	779.42		149.32		649.52	
Transformer	100%	61.01		100%	53.08		10.16		44.23	
			8,129.16			7,429.65		1,354.86	6,191.40	7,546.26
Depreciation										
Old Trestle	75%	449.72		100%	599.62		74.96		499.60	
New Additions to Trestle	75%	348.52		100%	464.68		58.08		387.23	
Chain Link Fence	75%	72.95		100%	97.27		12.16		81.06	
Sheet Piling	75%	213.19		100%	284.25		35.54		236.88	
Oil and Water Line	75%	28.34		100%	37.79		4.72		31.49	
Crane	100%	2,545.47		100%	2,545.47		424.24		2,121.23	
Crane Foundation	100%	597.26		100%	597.26		99.54		497.72	
Transformer	100%	40.67		100%	40.67		6.78		33.89	
			4,296.12			4,667.01		716.02	3,889.10	4,605.12
Insurance										

Insurance											
Trestle	75%	348.62		100%	464.80		58.10		387.30		
Chain Link Fence	75%	12.19		100%			2.02				
Crane	100%	579.54		100%	508.61		96.60		428.90		
			940.35			973.41		156.72		816.20	972.92
Maintenance											
Trestle	75%	273.43		100%	149.39		45.58		124.50		
Crane	100%	1,489.35		100%	1,743.64		248.22		1,448.00		
			1,762.78			1,893.03		293.80		1,572.50	1,866.30
Total—Trestle—Berth and Crane and Foundation			32,298.01			32,887.23		5,383.00		27,406.00	32,789.00
Flat Cars											
Taxes	100%	66.74		100%	88.17		11.17		73.47		
Return on Investment	100%	101.52		100%	134.08		16.88		111.73		
Depreciation	100%	67.44		100%	100.84		11.24		84.04		
Insurance	100%	21.38		100%	17.93		3.55		14.92		
Maintenance	100%			100%	263.57				219.64		
Total—Flat Cars			257.08			604.59		42.84		503.80	546.64
Locomotive #400											
Taxes	100%	139.80					23.30				
Return on Investment	100%	227.40					37.90				
Depreciation	100%	378.94					63.16				
Insurance	100%	15.00					2.50				
Property Damage Ins.	100%	100.00					16.66				
Maintenance	100%	2,873.65					478.94				
Total—Locomotive #400			3,734.79					622.46			622.46
			36,289.88			33,491.82		6,048.30		27,909.80	33,958.10
Office—Hoboken Office			600.00			600.00		100.00		500.00	600.00
Shed—Fifth Street Station			180.00			180.00		30.00		150.00	180.00

[fol. 603]

Schedule 2.

Hoboken Manufacturers Railroad Company
Comparative Statement of Operating Credits and Income Credits from Rental Billed Seatrain Lines, Inc.
Years 1936 and 1937

		Operating Expenses				Rent Income		Other Income	Misc. Deductions From Income
		Maintenance of Way and Structures	Maintenance of Equipment	Transportation	Acct. 532 Railway Tax Accruals	Acct. 504 Rent From Loco's.	Acct. 507 Rent From Work Equip.	Acct. 510 Misc. Rents Interest on Investments	Account 543 Misc. Rents
1936									
Trestle, Berth, Crane and Foundation	32,298.01	6,999.25			9,863.52			8,129.16	7,306.08
Flat Cars	257.08		88.82		66.74		101.52		
Locomotive #400	3,734.79	15.00	827.50	2,525.09	139.80	227.40			
	36,289.88	7,014.25	916.32	2,525.09	10,070.06	227.40	101.52	8,129.16	7,306.08
1937									
First Two Months									
Trestle, Berth, Crane and Foundation	5,383.00	1,166.54			1,643.92			1,354.86	1,217.68
Flat Cars	42.84						42.84		
Locomotive #400	622.46		140.42	420.84	23.30	37.90			
	6,048.30	1,166.54	140.42	420.84	1,667.22	37.90	42.84	1,354.86	1,217.68
Last Ten Months									
Trestle, Berth, Crane and Foundation	27,405.00	6,277.80			9,424.70			6,191.40	5,512.10
Flat Cars	503.80						503.80		
Locomotive #400									
	27,908.80	6,277.80			9,424.70		503.80	6,191.40	5,512.10
Total Year	33,958.10	7,444.34*	140.42	420.84	11,091.92	37.90	546.64	7,546.26	6,729.78
Increase or Decrease	2,331.78	430.09	775.90	2,104.25*	1,021.86**	189.50	445.12***	582.90	576.30

*The net decrease in Transportation Expenses was $7,761.11. Under the new operating contract the payment by Hoboken to Seatrain for terminal services was changed from 40¢ per ton on all freight to 73¢ per ton on lighterage free freight only. This resulted in a decrease in payments to Seatrain of $9,865.36, making a net decrease of $7,761.11 in Transportation.

**The increase of $1,021.86 was adjusted to $1,106.50.

***I. C. C. letter ordered entire amount of Work Equipment Rental Creditable to Account 507. The increase of $445.12 was adjusted to $419.20.

[fol. 604] EXHIBIT No. 24—WITNESS: GRAHAM M. BRUSH

Hoboken Manufacturers Railroad Interchange
With Its Rail Connections for March and September 1937

	*Traffic interchanged with Seatrain Vessels	All other traffic to and from Hoboken	Total
Number of Cars Handled	1102	875	1977
Number of Tons (short) Handled	34069	18582	52651
Average Load per Car (tons)	30.9	21.2	26.6
Average Haul per Ton of Trunk Lines (statute miles)	258	486	338
Average Revenue per Car of Trunk Lines (dollars)	$120.86	$122.24	$121.47
Average Revenue per Car Mile of Trunk Lines (cents)	46.97¢	25.02¢	35.91¢
Average Revenue per Ton of Trunk Lines (dollars)	$3.91	$5.76	$4.56
Average Revenue per Ton Mile of Trunk Lines (mills)	15.2m	11.8m	13.5m

To show the net revenue which the Trunk Lines received after deducting the allowances paid to Hoboken, the allowances per ton paid for 1937 were averaged for Seatrain and for other traffic. These averages were 61.1¢ per actual ton handled on Seatrain carload traffic and 94.3¢ per ton on all other traffic. With few exceptions the Trunk Lines paid only 60¢ per ton on all Seatrain carload traffic whereas Hoboken billed the Trunk Lines $1.00 per ton on all Seatrain carload traffic for the first two months and for the last ten months billed 60¢ per ton on Seatrain carload traffic not lighterage free and $1.35 per ton on Seatrain carload traffic lighterage free, resulting in an average charge on all Seatrain traffic of 94.8¢ per ton actually handled. From the above average revenues of the Trunk Lines per ton mile and per car mile the average allowances as paid and as billed have been deducted to show the Net Revenue per ton mile and per car mile to the Trunk Lines after absorbing the allowances of Hoboken.

	*Traffic interchanged with Seatrain Vessels	All other traffic to and from Hoboken	Total
Average Revenue per car mile for Trunk Lines after deducting Hoboken allowances as paid	39.55¢	20.99¢	33.00¢
Average Revenue per car mile for Trunk Lines after deducting Hoboken allowances as charged	35.54¢	20.99¢	30.40¢
Average Revenue per ton mile for Trunk Lines after deducting Hoboken allowances as paid	12.8m	9.9m	11.78m
Average Revenue per ton mile for Trunk Lines after deducting Hoboken allowances as charged	11.5m	9.9m	10.94m

* These are the actual deliveries and receipts to and from Seatrain vessels during these months. There were 12 arrivals and 12 departures of such vessels during these calendar months. These are not necessarily the number of cars, etc., interchanged with the Trunk Lines during such months of Seatrain Traffic.

[fol. 605] EXHIBIT No. 25

Witness: Graham M. Brush

Hoboken Manufacturers Railroad Interchange With Seatrain Vessels During March and September 1937

Number of Cars Handled	1102
Number of Tons (short) Handled	34069
Average Load per Car (tons)	30.9
Average Haul per Ton of Seatrain (statute miles)*	1731

* Statute miles obtained from Hydrographic Office (Navy Dept.) between Hoboken and Belle Chasse via South Pass (1953 miles southbound—1977 miles northbound) and between Hoboken and Havana (1369 southbound and 1391 northbound).

Average Revenue per Car of Seatrain (ocean freight)	$174.05
Average Revenue per Car Mile of Seatrain (cents)	10.20¢
Average Revenue per Ton of Seatrain (ocean freight)	$ 5.63
Average Revenue per Ton Mile of Seatrain (mills)	3.3 m

Hoboken Manufacturers Railroad Company
Balance Sheet as of December 31, 1937

Assets

Investments:		
701	Investments in Road and Equipment	$58,020.74
702	Improvements on Leased Railway Properties	729,850.27
705	Miscellaneous Physical Property	3,172.00
	Total Investments	791,043.01
Current Assets:		
708	Cash	32,340.41
713	Traffic and Car Service Balances Receivable	174,372.55
715	Miscellaneous Accounts Receivable	24,828.86
716	Material and Supplies	14,898.45
	Total Current Assets	246,440.27
722	Other Deferred Assets	210,270.83
Unadjusted Debits:		
723	Rent of Leased Road Paid in Advance	8,849.76
723	Insurance Premiums Paid in Advance	5,041.55
	Total Unadjusted Debits	13,891.31
		$1,261,645.42

Liabilities

Stock:		
751	Capital Stock—Outstanding	$400,000.00
Long Term Debt:		
755	Funded Debt Unmatured	298,040.41
757	Non-Negotiable Debt to Affiliated Companies—Open Account	132,781.81
	Total Long Term Debt	430,822.22
Current Liabilities:		
759	Traffic and Car Service Balances Payable	250,304.90
760	Audited Accounts and Wages Payable	28,758.49
761	Miscellaneous Accounts Payable	3,459.88
766	Unmatured Interest Accrued	4,507.35
767	Unmatured Rent Accrued	10,204.27
	Total Current Liabilities	297,234.89
Unadjusted Credits:		
771	Tax Liability	2,345.67
775	Accrued Depreciation—Road	98,805.01
776	Accrued Depreciation—Equipment	23,004.69
777	Accrued Depreciation—Miscellaneous Physical Property	1,946.10
778	Other Unadjusted Credits—Accrued Depreciation Leased Property	23,523.40
778	Other Unadjusted Credits—Leased Property Retired not Replaced	49,912.00
	Total Unadjusted Credits	199,536.87
Corporate Surplus:		
784	Profit and Loss—Debit Balance	65,948.56
	Total	$1,261,645.42

(Here follows 1 photolithograph, side folio 609)

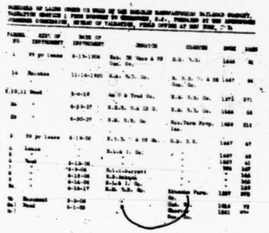
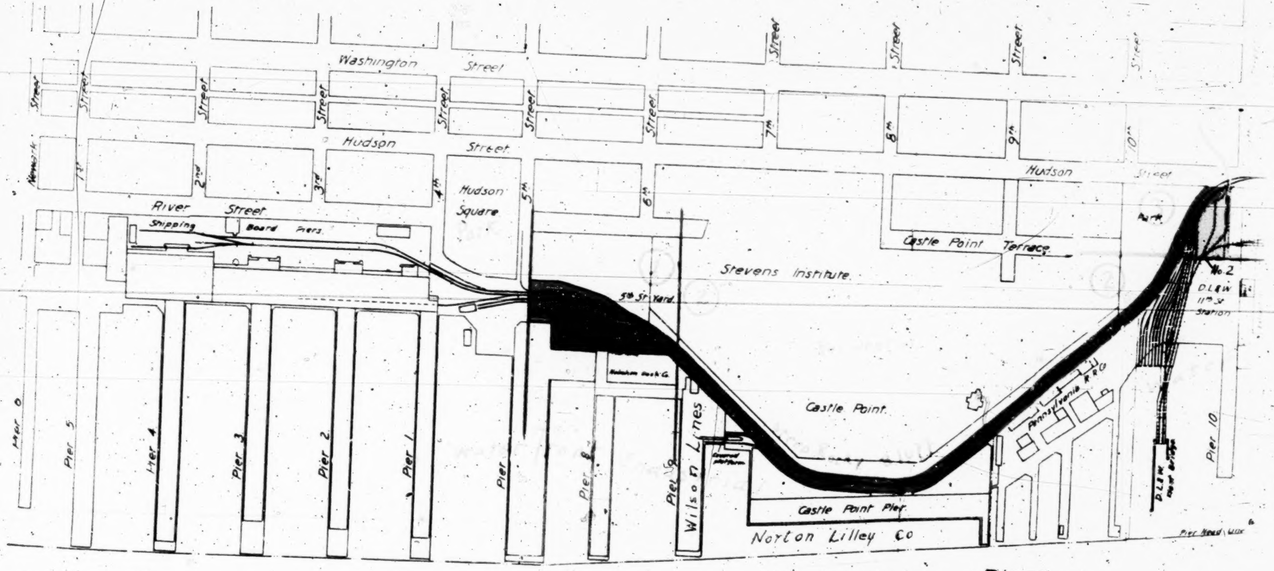
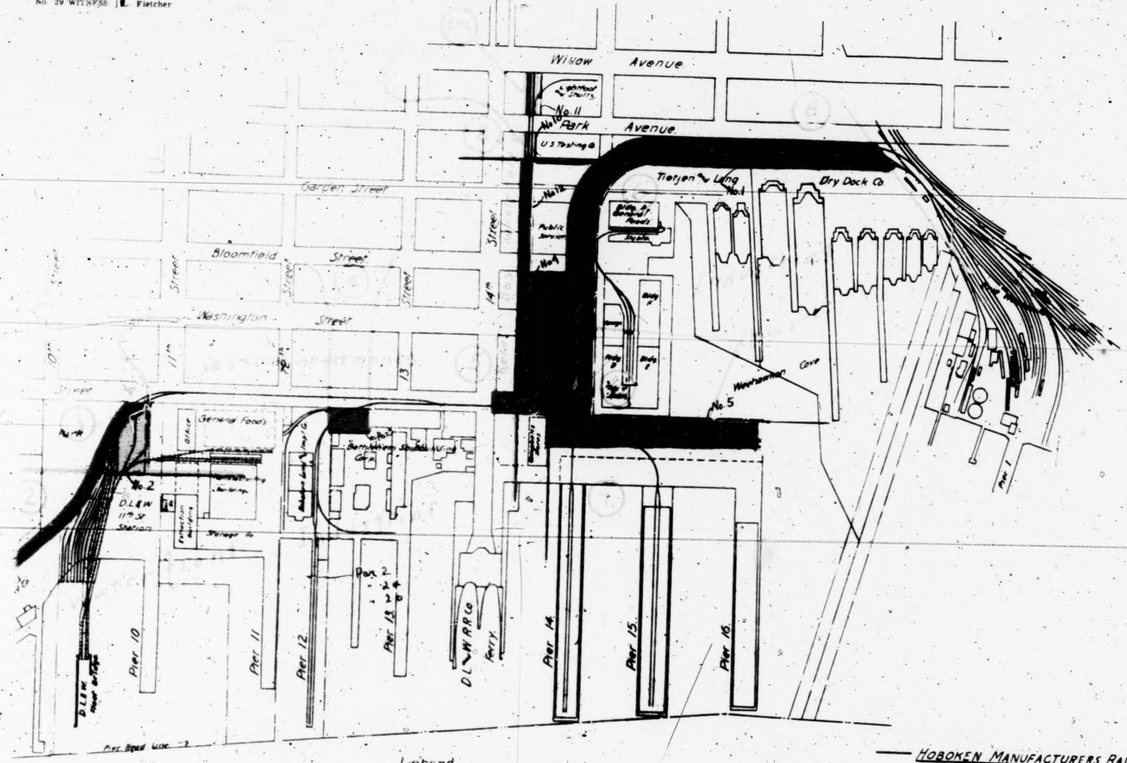


EXHIBIT No. 29 WITNESS J.L. Fletcher

No. 29 WITNESS J.L. Fletcher





Legend
= Owned
= Leased from Hob. R.R.-Whse & SS Co's Co
= Leased from Hob. L & I Co

HOBOKEN MANUFACTURERS RAILROAD CO
TRACK PLAN
Scale 1" = 200'
Hoboken N.J.
August 19, 1938

[fol. 610] EXHIBIT No. 30—WITNESS: J. L. FLETCHER

Hoboken Manufacturers Railroad Company

From Land Report of Bureau of Valuation, Interstate Commerce Commission, Dated May 31, 1935, as of December 31, 1933.

Class 1

Lands Owned and Used by Owner for its Purposes as a Common Carrier.

Zone	Limits of Zone From	To	Area (Square Feet)	Unit	Value
3	Parcel 2		26,255	$1.50	$39,383
8	Par. 10, Pt. 11		6,900	2.00	13,800
	Total (all urban)	0.76 acres			$53,183

Class 2-2

Lands Used by the Carrier for its Purposes as Such, But Owned by Parties Other Than Common Carriers.

(Leased from Hoboken Land and Improvement Company.)

6	Parcel 4	58,180	$1.75	$101,815
7	Parcel 5	94,350	1.50	141,525
	Total (all urban)	3.50 acres		$243,340

[fol. 611] Class 2-1

Lands Used by the Carrier for its Purposes as Such, but Owned by Another Carrier or Other Carriers.

(Owned by the Hoboken Rail Road Warehouse and Steamship Connecting Company and Used Exclusively by Hoboken Manufacturers Railroad Company)

Zone	From	To	Square Feet	Unit	Value
1	N. L. 5th St. Ext'd.	Line 585 ft. N. of & parallel to 5th St. Ext. (Pt. parcel 1)	89,235	$1.50	$133,853
2		Line 275 Ft. E. of & parallel with E. L. Hudson St. (Pt. parcel 1)	111,375	1.25	139,219
3	Frontage on E. L. Hudson St. to depth of 275 ft. (Pt. parcel 1)		19,200	1.50	28,800
4	Parcel 3		14,080	2.00	28,160
5	Frontage on 3rd St. (Pt. parcel 1)		5,440	3.00	16,320
6	E. L. Hudson St. Ext'd.	Line 100 ft. E. of & parallel to E. L. Park Ave. (Pt. parcel 1)	157,891	1.75	276,309
8	Frontage 100 ft. deep on E. side Park Ave. (Pt. parcel 1)		107,000	2.00	214,000
	Total (all urban)	11.58 acres			$836,661

Class 4

Non-Carrier Lands Owned, Including Value of Improvements Owned by Carrier.

8	NC Pt. parcel 11	5,675	2.00	$11,350

[fol. 612] EXHIBIT No. 31—WITNESS: A. E. KRIESIEN

Statement of Cars Received from and Delivered to the Hoboken Manufacturers Railroad Company During the Years 1936 and 1937 and the first 9 months of 1938.

Recapitulation

Period (Year)	H.M. R.R. to Erie R.R.			Erie R.R. to H.M.R.R.		
	Loads	Empties	Total	Loads	Empties	Total
1936	5498	2533	8031	6174	2425	8599
1937	5902	3012	8914	6773	1581	8354
1938*	3618	2825	6443	4920	1486	6406

* First 9 months only.

Office of Supt. of Terminals,
Erie R. R.—Jersey City, N. J.
October 13, 1938.

[fol. 613] Year 1936

H.M. R.R. to Erie

Month 1936	Loads	Empties	Total
January	556	175	731
February	420	200	620
March	517	171	688
April	423	167	590
May	526	223	749
June	512	256	768
July	441	185	626
August	370	67	437
September	433	430	863
October	367	218	585
November	421	206	627
December	512	235	747
Total	5498	2333	8031

Erie to H.M. R.R.

Month 1936	Loads	Empties	Total
January	476	406	882
February	515	149	664
March	588	150	738
April	415	429	844
May	537	241	778
June	471	207	678
July	445	187	632
August	499	163	662
September	566	123	689
October	527	116	643
November	542	104	646
December	593	150	743
Total	6174	2425	8599

[fol. 614] Year 1937

H.M. R.R. to Erie

Month 1937	Loads	Empties	Total
January	555	167	722
February	547	218	765
March	695	426	1121
April	523	289	812
May	585	305	890
June	600	338	938
July	451	203	654
August	438	122	560
September	408	217	625
October	424	226	650
November	390	247	637
December	286	254	540
Total	5902	3012	8914

Erie to H.M. R.R.

Month 1937	Loads	Empties	Total
January	572	151	723
Feburary	572	188	760
March	521	48	569
April	685	107	792
May	718	271	989
June	639	168	807
July	516	79	595
August	465	82	547
September	470	135	605
October	546	139	685
November	557	82	639
December	512	131	643
Total	6773	1581	8354

[fol. 615] January to September 1938 incl.

H.M. R.R. to Erie R.R.				Erie R.R. to H.M. R.R.			
Month 1938	Loads	Empties	Total	Month 1938	Loads	Empties	Total
January	344	199	543	January	584	190	774
February	322	320	642	February	583	118	701
March	454	335	789	March	636	127	763
April	430	313	743	April	589	93	682
May	505	334	839	May	595	248	843
June	447	404	851	June	477	196	673
July	359	338	697	July	519	180	699
August	389	352	741	August	495	236	731
September	368	230	598	September	442	98	540
Total	3618	2825	6443	Total	4920	1486	6406

[fol. 616] EXHIBIT No. 32

Witness: E. A. Hodkinson

[fol. 617] Valuation Docket No. 1201

Hoboken Manufacturers Railroad Company et al.[1]

Submitted March 13, 1936. Decided March 31, 1936

1. Final value for rate-making purposes of the property of the Hoboken Manufacturers Railroad Company, owned and used for common-carrier purposes, found to be $300,000 as of December 31, 1933, and of property used but not owned $1,325,000.

2. Final value for rate-making purposes of the property of The Hoboken Rail Road Ware House and Steamship Connecting Company, owned but not used, leased to the Hoboken Manufacturers Railroad Company, found to be $1,000,000 as of December 31, 1933.

Report of the Commission

Division 1, Commissioners Meyer, Aitchison, and Lee

By Division 1:

The Hoboken Manufacturers Railroad Company, hereinafter called the carrier, is a corporation of the State of

[1] This report includes also the valuation of The Hoboken Rail Road Ware House and Steamship Connecting Company.

New Jersey. It owns and operates a switching and terminal railroad in the city of Hoboken, N. J., with 0.221 mile of main track and 1.375 miles of yard tracks and sidings. It operates under lease 1.411 miles of main track and 5.65 miles of yard tracks and sidings owned by The Hoboken Rail Road Ware House and Steamship Connecting Company and 0.060 mile of yard tracks owned by the Hoboken Land and Improvement Company. The operated mileage aggregates 8.72 miles of all track.

By our order of January 30, 1936, entered in this proceeding, we completed the tentative valuation as of December 31, 1933, of the property of the carrier and of its lessor, The Hoboken Rail Road Ware House and Steamship Connecting Company. Notice thereof was duly served upon the carriers and other interested parties in the manner and as required by law. No protest was filed as provided for in section 19a of the Interstate Commerce Act by any of the parties in interest in this proceeding. The tentative valuation will be made final.

[fol. 618] Order

At a Session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D. C., on the 31st day of March, A. D. 1936.

Valuation Docket No. 1201

Hoboken Manufacturers Railroad Company and The Hoboken Rail Road Ware House and Steamship Connecting Company

It appearing, That a notice of the tentative valuation of the properties of the above-entitled carriers, heretofore made by the Commission under and in compliance with the authority conferred and the duties imposed upon it by section 19a of the Interstate Commerce Act, was duly given to said carriers and to the Attorney General of the United States, the Governor of New Jersey, and the New Jersey Board of Public Utility Commissioners;

It further appearing, That no protest against said tentative valuation was filed with the Commission within the limit of 30 days specified in paragraph (h) of said section 19a:

It is ordered, That the following be, and it is hereby declared to be, the final valuation of the properties of the Hoboken Manufacturers Railroad Company and The Hoboken Rail Road Ware House and Steamship Connecting Company as of December 31, 1933.

Location and general description of property.—The Hoboken Manufacturers Railroad Company, hereinafter called the carrier, operates a switching terminal railroad within the city of Hoboken, N. J. The main line extends from near Eighteenth Street and Park Avenue, along the water front to a point near First Street and River Street. It is a single-track, standard-gage railroad 1.632 miles long, having numerous yard tracks and sidings, aggregating 7.092 miles in length. It thus operates 8.724 miles of all tracks.

The owned property consists of certain yard tracks extending from the easterly line of Park Avenue, between Fourteenth and Fifteenth Streets, across Park Avenue, to the easterly line of Willow Avenue, certain yard tracks located on the easterly side of Hudson Street, slightly north of Eleventh Street, and property known as the Wilson platform located near the Wilson Line pier and Seventh Street extended, all on owned land; certain yard tracks located on The Delaware, Lackawanna and Western Railroad Company's right-of-way located east of Hudson Street, between Tenth and Twelfth Street extended; and 0.221 mile of the operated main line and certain yard tracks between Fourth and First Streets near River Street located on land owned by the United States Shipping Board. It also comprises improvements consisting of cer- [fol. 619] tain yard tracks north of Fourteenth Street west of Hudson Street extended and east of Bloomfield Street extended, and a Seatrain loading crane and other facilities on the wharf north of Fourteenth Street and the easterly side of Hudson Street extended, all located on lands owned by the Hoboken Land and Improvement Company. In all, it owns 1.375 miles of yard tracks and sidings.

In addition to its owned property, the carrier leases from the Hoboken Land and Improvement Company 0.060 mile of yard tracks and sidings, shop buildings, and dock property located north of Fourteenth Street and on the east side of Hudson Street, between Twelfth and Thirteenth Streets. It also leases from The Hoboken Rail Road Ware House and Steamship Connecting Company 1.411 miles

of its operated main line, numerous yard tracks and sidings, aggregating 5.657 miles, an office building, a freight house, platforms, a track scale, and other miscellaneous facilities.

The carrier owns and uses 1.596 miles of all tracks and uses but does not own 7.128 miles of all tracks. These tracks, consisting of main-line and yard tracks and sidings are further classified in the track-mileage table in appendix 1.

The carrier is controlled by the Seatrain Lines, Incorporated. Its principal business is the switching of freight cars between its rail connection, piers, and boats of the controlling company engaged in transporting by water carload freight between Hoboken, New Orleans, and Havana. The cars are loaded and unloaded on the ships by means of a huge traveling crane.

The Carrier

Capital stock and long-term debt.—The carrier has outstanding, on date of valuation, a total par value of $796,859.26 in stock and long-term debt, of which $400,000 represents common stock, $198,304.07 funded debt, and $198,555.19 nonnegotiable debt to Seatrain Lines, Incorporated.

Results of corporate operations.—For the period from January 1, 1917, to date of valuation, the aggregate railway operating expenses have been 81.90 percent of the railway operating revenues and for the period of 5 years preceding date of valuation, 79.67 percent. The ratios and the net railway operating income or deficit for the years indicated have been, respectively, as follows: 1927, 79.92 and $20,136 income; 1928, 76.02 and $87,411 income; 1929, 77.49 and $86,601 income; 1930, 76.91 and $37,937 income; 1931, 85.70 and $12,505 deficit; 1932, 99.64 and $61,197 deficit; and 1933, 72.53 and $36,506 income.

[fol. 620] During the 1917-33 period for which accounting records are available, two dividends were declared: One at 62.5 percent in 1922 and the other at 237.89 percent in 1927. The dividends were paid partly with cash and partly with investment securities and accrued interest on the investment securities, as detailed in appendix 2.

Original cost to-date.—The actual original cost to date of the common carrier properties owned or used by the carrier cannot be ascertained, as the necessary records are

not obtainable. However, the approximate original cost to date of such properties, principally estimated, exclusive of lands and assessments for public improvements, is found to be $264,841 for property owned and used; $91,836 for property owned by the Hoboken Land and Improvement Company, a noncarrier corporation; and $201,668 for property owned by The Hoboken Rail Road Ware House and Steamship Connecting Company, as explained in appendix 2.

Investment in road and equipment.—The investment of the carrier in road and equipment, including land, on date of valuation, is stated in its books as $62,072.66. If readjustments were made as indicated by our accounting examination, this amount would be increased to $202,409.05. This adjusted amount is the net of $1,429,527.98 stated in this account as of June 30, 1917, for which an analysis was not obtained due to lack of necessary records, $335,876.77 recorded money outlay, and $612,027.78 value assigned to property acquired through donations; less $592,560.17 credited for property retired, $747,824.69 transferred to the miscellaneous physical property account, $463,814.33 transferred to the improvements on leased railway property account, $370,824.29 credited to reduce the book value for road and equipment, excluding land, to agree with an estimated value of such property as of June 30, 1917. This account, as conditionally adjusted, includes the undetermined cost of the noncarrier land owned. Further information will be found in appendix 2.

Improvements on leased railway property.—The investment of the carrier in improvements on leased railway property, on date of valuation, is stated in its books as $734,660.97. If adjustments were made as indicated by our accounting examination, this amount would be reduced to $594,324.58. This adjusted amount is the net of $463,814.33 transferred from the investment in road and equipment account, for which an analysis was not obtainable, and $168,612.21 recorded money outlay, less $38,101.96 credited for property retired. Further information will be found in appendix 2.

Cost of reproduction new and cost of reproduction less depreciation.—The cost of reproduction new and cost of reproduction less depreciation of all common-carrier prop-

[fol. 621] erty, other than land and material and supplies, owned or used by the carrier are as shown below.

Classification	Cost of reproduction new	Cost of reproduction less depreciation
Owned and used	$288,268	$233,079
Used but not owned, leased from—		
Hoboken Land and Improvement Company	137,012	90,167
The Hoboken Rail Road Ware House and Steamship Connecting Company	282,055	174,583
Total used but not owned	419,067	264,750
Total owned	288,268	233,079
Total used	707,335	497,829

These amounts, classified in conformity with the classification of expenditures for road and equipment as prescribed by us, are shown in the summary sheets which are a part of appendix 1.

Information as to the character of the property used but not owned will be found in appendix 2, under the caption Leased Railway Property.

Prices based on consideration of normal prices during the period 1931 to 1935, inclusive, were used in arriving at the cost of reproduction.

Cost of lands, rights-of-way, and terminals at time of dedication to public use, and their present value.—The carrier owns and uses for common-carrier purposes 0.76 acre of land in New Jersey. The original cost of these lands cannot be definitely ascertained, as the necessary records are not obtainable, but data on their cost will be found in appendix 2.

The areas and present values of the carrier lands owned or used are as shown below:

Classification	Acres	Present value
Owned and used	0.76	$53,183
Used but not owned, leased from		
Hoboken Land and Improvement Company	3.50	243,340
The Hoboken Rail Road Ware House and Steamship Connecting Company	11.58	836,661
Total	15.08	1,080,001
Total owned	0.76	53,183
Total used	15.84	1,133,184

Property held for purposes other than those of a common carrier.—The carrier owns and holds for noncarrier purposes 0.13 acre of land in New Jersey. The original cost [fol. 622] of this land cannot be definitely ascertained, as the necessary records are not obtainable, but data on its cost will be found in appendix 2. Its present value is $11,350.

The investment of the carrier in miscellaneous physical property on date of valuation is stated in its books as $3,172, representing the recorded cost of a bulletin advertising rack located at Fourteenth and Washington Streets, Hoboken, N. J.

The carrier owns and holds cash on hand and material and supplies in the amount of $35,969. Of this amount, $11,062 is necessary for its use as working capital and that sum is, therefore, included in the final value stated elsewhere in this report. The remainder, $24,907, is owned and held by the carrier for noncarrier purposes.

Aids, gifts, grants of rights-of-way, and donations.—Of the lands included in the preceding statement of carrier lands owned and used by the carrier 0.60 acre, with a present value of $39,383, was acquired through a donation. This land is a part of the lands that were donated to the carrier, along with other property, by the American Warehouse & Training Company. The donation was recorded by the carrier by crediting $611,975 to additions to property through income and surplus account, charging $445,576 to the investment in road and equipment account, and $166,399 to the miscellaneous physical property account. All of the property represented by the charge to miscellaneous physical property and the major portion of the property represented by the charge to investment in road and equipment were disposed of prior to date of valuation.

In addition, the carrier recorded, through a credit to profit and loss account Donations, $183,758.28 as the value of donations to it by the United States Government, War Department, of which $166,451.78 was charged to investment in road and equipment and $17,306.50 was charged to material and supplies. The amount charged to investment in road and equipment consisted of $151,390.78 for certain construction, and curvature reduction, of tracks in the Fourteenth Street yard, $5,003 for certain tools, office furniture and typewriters, 1 boiler, 1 launch, 1 crane, and 1 truck, and $10,058 for 2 locomotives.

Material and supplies.—The book value of the material and supplies on hand, on date of valuation, is shown in the records of the carrier as $11,286.53.

Final value.—After careful consideration of all facts herein contained, including appreciation, depreciation, going-concern value, working capital, and all other matters which appear to have a bearing upon the values here reported, the values, for rate-making purposes, of the property of the carrier, owned or used, devoted by it to common-carrier purposes, are found to be as follows:

[fol. 623]

Classification	Final value
Owned and used	$300,000
Used but not owned, leased from—	
Hoboken Land and Improvement Company	325,000
The Hoboken Rail Road Ware House and Steamship Connecting Company	1,000,000
Total used but not owned	1,325,000
Total owned	300,000
Total used	1,625,000

The sum of $11,062 is included in the value above stated, as owned and used on account of working capital, consisting entirely of a stock of material and supplies.

No other values or elements of value to which specific sums can now be ascribed are found to exist.

The Hoboken Rail Road Ware House and Steamship Connecting Company

Capital stock and long-term debt.—The Hoboken Rail Road Ware House and Steamship Connecting Company has outstanding, on date of valuation, a total par value of $354,500 in stock and long-term debt, of which $300,000 represents common stock and $54,500 funded debt.

Original cost to date.—The actual original cost to date of the common-carrier property owned by The Hoboken Rail Road Ware House and Steamship Connecting Company and used by the carrier, cannot be ascertained, as the necessary records are not obtainable. However, the approximate original cost to date of such property, exclusive of lands, is estimated to be $201,668, as explained in appendix 2.

Investment in road and equipment.—The investment of The Hoboken Rail Road Ware House and Steamship Con-

necting Company in road and equipment, including land, on date of valuation, is stated in its books as $474,680.81. If readjustment were made as indicated by our accounting examination, this amount would be reduced to $473,241.96. This amount, which cannot be fully analyzed owing to missing records, is known to contain $215,000 paid with capital stock, the cash value of which at the time of the transaction cannot be definitely determined, because it has been impossible to obtain the necessary information. Further information will be found in appendix 2.

Cost of reproduction new and cost of reproduction less depreciation.—The cost of reproduction new and cost of reproduction less depreciation of all common-carrier property, other than lands, owned but not used by The Hoboken [fol. 624] Rail Road Ware House and Steamship Connecting Company, leased to the carrier, are $282,055 and $174,583, respectively. These amounts, classified in conformity with the classification of expenditures for road and equipment prescribed by us, are shown in appendix 1.

Cost of lands, rights-of-way, and terminals at time of dedication to public use, and their present value.—The Hoboken Rail Road Ware House and Steamship Connecting Company owns but does not use 11.58 acres of land in New Jersey that are leased to the carrier for common-carrier purposes. The original cost of these lands cannot be ascertained, as the necessary records are not obtainable. Their present value is $836,661.

Property held for purposes other than those of a common carrier.—The Hoboken Rail Road Ware House and Steamship Connecting Company owns and holds for noncarrier purposes cash on hand in the amount of $9,107.

Aids, gifts, grants of rights-of-way, and donations.—The records, which are incomplete, do not show that The Hoboken Rail Road Ware House and Steamship Connecting Company has received any aids, gifts, grants, or donations.

Material and Supplies.—The Hoboken Rail Road Ware House and Steamship Connecting Company has no material and supplies on hand on date of valuation.

Final value.—After careful consideration of all facts herein contained, including appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the value here reported, the value, for rate-making purposes, of the property of The Hoboken Rail Road Ware House and Steamship Connecting Com-

pany, owned but not used, leased to the carrier and devoted by it to common-carrier purposes, is found to be $1,000,000.

No working capital, including material and supplies, is found to be owned or used by The Hoboken Rail Road Ware House and Steamship Connecting Company. No other values or elements of value to which specific sums can now be ascribed are found to exist.

In General

With respect to each of the carriers embraced in this proceeding, in addition to other matters stated, the following paragraphs apply as a part of each respective valuation.

Appendixes.—Attached hereto and made a part hereof are appendixes 1, 2 and 3. Appendix 1 gives the explanatory text and summary sheets showing the classification of mileage, and the classification of the cost of reproduction new and cost of reproduction less depreciation, previously herein set forth, in conformity with the classification of expenditures for road and equipment prescribed by us.

[fol. 625] Appendix 2 shows in detail the history and organization of the carrier; certain data on considerations received by reason of issues of stocks, bonds and other securities; the net and gross earnings; the development of fixed physical property; investment in road and equipment; data on the cost of lands, rights-of-way, and terminals; the general balance sheet statement; and other pertinent information.

Appendix 3 is a statement of the method used for determining working capital.

Reference is made to Appendix 3, *Texas Midland R.*, 75 I. C. C. 1, 108, which is hereby made a part hereof, for a statement of the methods employed and of the reasons for the differences between the various cost values reported.

The accounting, engineering, and land reports, copies of which have been furnished to interested parties and to the Governor of the State in which the carrier operates, give the details respecting the figures here reported, and are on file in the Bureau of Valuation of the Commission, open to public inspection, and subject to the direction of Congress. These reports are referred to for greater particularity as to the matter herein stated.

By the Commission, division 1.

George B. McGinty, Secretary. (Seal.)

Appendix 1

Track Mileage

The track mileage owned or used by the carrier is classified in the following table:

Classification	Main track	Yard tracks and sidings	All tracks
	Miles	*Miles*	*Miles*
Owned and used	0.221	1.375	1.596
Used but not owned, leased from—			
Hoboken Land and Improvement Company		0.060	0.060
The Hoboken Rail Road Ware House and Steamship Connecting Company	1.411	5.657	7.068
Total used but not owned	1.411	5.717	7.128
Total owned	0.221	1.375	1.596
Total used	1.632	7.092	8.724

Traffic Connections

The carrier has rail connection with the Erie Railroad Company near Eighteenth Street and Park Avenue, Hoboken, N. J. It also interchanges freight with the Seatrain Lines, Incorporated, a steamship company.

[fol. 626] Physical Conditions Affecting Construction

The property is located on level land adjacent to the Hoboken water front. The tracks for a considerable distance are laid in paved streets. The soil in this region is sandy.

Economic Conditions Relating to Traffic

The carrier performs switching service between the Erie Railroad and industries and piers located along the Hoboken water front, primarily for the Seatrain Lines, Incorporated. The commodities handled are diversified and in carload lots destined from or to Gulf ports and Havana, Cuba.

Physical Characteristics of Road

The grading is very light, consisting only of a minimum section and trenching through paved streets. The land

has been appraised in its present improved condition including filling and bulkheading with the exception of a small amount of sheet-steel piling.

There are no metal bridges or pile-and-frame trestles. The crossties consist of untreated pine and oak. The main line is laid with 90-, 91-, 95-, and 128-pound new rail. The 128-pound girder rail is laid through paved streets. The tracks are ballasted with cinders and sand.

The most important structures are the stuccoed 3-story frame office building, the 1-story corrugated galvanized-iron freight house, and the 2-story brick combination office, machine shop, engine house, and storehouse. There is a 150-ton track scale located in the Fifteenth Street yard. Considerable Belgian block paving is laid along River Road and near Hudson and Bloomfield Streets.

The crane used for loading and unloading freight cars on the Seatrain lines is a 125-ton Niles model, 68 feet between train girders and 107 feet travel, equipped with two 250-ton hoisting motors, one 100-ton traveling motor, and a 30-horsepower generating motor. The pile-and-frame dock is located at the foot of Fourteenth Street and is 580 feet long by 37 feet wide. Considerable dredging was necessary to provide a slip for the ships.

Equipment

The carrier owns and uses 1 gasoline and 2 oil-electric locomotives, 8 flat cars, and 3 units of work equipment, consisting of 1 tank car, 1 gondola, and 1 snow sweeper.

Engineering and General Expenditures

Engineering has been estimated at 5 percent on road accounts 3 to 47. General expenditures, exclusive of interest, have been estimated at 3 percent on road accounts 1 to 47, exclusive of account 2. Interest during construction has been estimated for one-half the construction period, plus 3 months, at 6 percent per annum on all road and general-expenditures accounts, except accounts 2 and 76. Interest on equipment has been estimated for 3 months at 6 percent per annum. It has been estimated that a period of 6 months would be required for the construction of the entire property, both owned and leased.

[fol. 627] Summaries

Owned and used

Account	Classes	Cost of reproduction new	Cost of reproduction less depreciation
	I. Road		
1	Engineering	$6,275	$6,275
3	Grading	1,664	1,664
8	Ties	3,007	1,567
9	Rails	9,384	7,338
10	Other track material	5,595	3,379
11	Ballast	1,049	526
12	Tracklaying and surfacing	4,696	3,148
15	Crossings and signs	275	138
16	Station and office buildings	6,497	3,626
23	Wharves and docks	77,223	74,169
37	Roadway machines	140	73
44	Shop machinery	15,966	5,942
	Total, 1, and 3 to 47, inclusive	131,771	107,845
	II. Equipment		
52	Other locomotives	140,790	113,201
53	Freight-train cars	3,063	2,462
57	Work equipment	2,425	1,236
	Total, 51 to 58, inclusive	146,278	116,899
	III. General Expenditures		
71	Organization expenses		
72	General officers and clerks		
73	Law	3,953	3,241
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	6,266	5,094
	Total, 71 to 77, inclusive	10,219	8,335
	Grand total, 1, and 3 to 77, inclusive	288,268	233,079

Used but not owned, leased from the Hoboken Land and Improvement Company

Account	Classes	Cost of reproduction new	Cost of reproduction less depreciation
	I. Road		
1	Engineering	$6,150	$6,150
3	Grading	30	30
8	Ties	192	113
9	Rails	241	187
10	Other track material	439	255
11	Ballast	34	17
12	Tracklaying and surfacing	237	149
20	Shops and engine houses	49,862	29,110
23	Wharves and docks	71,962	48,965
	Total, 1, and 3 to 47, inclusive	129,147	84,976

Account	Classes	Cost of reproduction new	Cost of reproduction less depreciation
	III. General Expenditures		
71	Organization expenses		
72	General officers and clerks		
73	Law	3,874	2,557
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	3,991	2,634
	Total, 71 to 77, inclusive	7,865	5,191
	Grand total, 1, and 3 to 77, inclusive	137,012	90,167

[fol. 628]

Used but not owned, leased from The Hoboken Rail Road Ware House and Steamship Connecting Company

Account	Classes	Cost of reproduction new	Cost of reproduction less depreciation
	I. Road		
1	Engineering	$12,660	$12,660
3	Grading	4,752	4,752
8	Ties	19,470	10,425
9	Rails	34,368	24,042
10	Other track material	43,031	25,788
11	Ballast	7,124	3,562
12	Tracklaying and surfacing	25,599	15,615
13	Right-of-way fences	2,294	1,033
15	Crossings and signs	1,934	918
16	Station and office buildings	108,766	62,843
17	Roadway buildings	89	18
36	Paving	5,477	2,739
38	Roadway small tools	300	150
	Total, 1, and 3 to 47, inclusive	265,864	164,545
	III. General Expenditures		
71	Organization expenses		
72	General officers and clerks		
73	Law	7,976	4,945
74	Stationery and printing		
75	Taxes		
77	Other expenditures, general		
76	Interest during construction	8,215	5,093
	Total, 71 to 77, inclusive	16,191	10,038
	Grand total, 1, and 3 to 77, inclusive	282,055	174,583

Appendix 2

Carrier

Introductory

The carrier is a New Jersey corporation having its principal office at Hoboken, N. J.

No accounting records could be obtained for the period prior to 1917, therefore only partial information can be given from the carrier's accounts regarding its financial dealings, corporate operations, or investments.

The carrier is controlled by the Seatrain Lines, Incorporated, through ownership of its outsfanding capital stock. The records obtained do not indicate that it controls any common-carrier corporation.

The property of the carrier, and that of its lessor, was operated by its own organization from June 19, 1906, to June 30, 1917. As of July 1, 1917, the War Department of the United States Government purchased the entire outstanding capital stock of the carrier and operated the property until July 1, 1927, when the Secretary of War sold the stock to interests affiliated with the carrier. From the latter date to date of valuation it has been operated by the carrier.

Corporate History

The carrier was incorporated July 21, 1902, under general laws of New Jersey, to construct, maintain, and operate a railroad in the city of Hoboken, N. J., connecting with The Hoboken Rail Road Ware House and Steamship Con- [fol. 629] necting Company, The Delaware, Lackawanna and Western Railroad Company, and other railroads.

Development of Fixed Physical Property

The owned mileage of the carrier, consisting of 0.221 mile of main track and 1.375 miles of yard tracks, was acquired by construction about 1906, and through subsequent additions and betterments. The yard tracks located partly on owned land and partly on the right-of-way of The Delaware, Lackawanna and Western Railroad Company aggregate 0.480 mile, the yard tracks owned but located on land leased from the Hoboken Land and Improvement Company aggregate 0.595 mile, and the tracks located on land owned by the United States Shipping Board aggregate 0.221 mile of main track and 0.300 mile of yard tracks, all located in the city of Hoboken, N. J.

Syndicating, banking, and other financial arrangements—Records obtained do not indicate any syndicating arrangements in connection with the issuance of securities.

The carrier has been financed partly by sale of its capital stock and partly by advances received from the Hoboken Terminal Properties, Incorporated, the Hoboken Land and Improvement Company, and the Seatrain Lines, Incorporated.

Capital Stock.—The authorized capital stock is $500,000 par value, shares $100 each, classified as common. Of this, $400,000 par value was issued at par for cash, and is all outstanding.

Funded debt.—Under authority granted October 28, 1932, in *Hoboken Mfrs. R. Co. Notes*, 189 I. C. C. 29, the carrier has issued, during the period December 1932 to date of valuation, nine notes to the Hoboken Land and Improvement Company in liquidation of open-account indebtedness to that company, aggregating $198,304.07. The notes bear 6-percent interest per annum, mature on December 31, 1935, and are actually outstanding on date of valuation.

Nonnegotiable debt to affiliated companies.—From 1918 to date of valuation the carrier has incurred nonnegotiable debt to affiliated companies aggregating $339,976.68, of which $259,976.68 was classified as open accounts and $80,000 notes. Of the total incurred $141,421.49 has been repaid, leaving $198,555.19 owing to the Seatrain Lines, Incorporated, on date of valuation.

The considerations recorded as passed in the incurring and part repayment of such debt were as detailed hereunder:

Incurred:	
Cash	$339,029.32
Interest accrued	947.36
Total incurred for considerations	339,976.68
Repaid, Cash	141,421.49
Owing on date of valuation:	
Notes	80,000.00
Open account	118,555.19
Total	198,555.19

[fol. 630] The note for $80,000 was issued under authority granted in *Hoboken Mfrs. R. Co. Notes, supra*, bears 6-per cent interest per annum, and is due December 31, 1935.

Results of Corporate Operations

As previously stated, no accounting records were obtainable for the period prior to January 1, 1917.

Income statement.—A condensed summary for the year ended December 31, 1933, and for the period January 1, 1917, to date of valuation, comprises the following: Railway operating revenues, year $313,025.42, period $5,356,187.36; railway operating expenses, year $227,039.06, period $4,386,887.36; railway tax accruals, year $35,856.78, period $675,237.54; uncollectible railway revenues, year $287.82, period $949.17; nonoperating income, year $9,732.87, period $786,122.21; deductions from gross income, year $61,577.54, period $1,249,297.95; resulting in a net deficit for the year of $2,002.91 and for the period of $170,062.45, transferred to profit and loss.

For the period from January 1, 1917, to date of valuation, the railway operating expenses have been 81.90 percent of railway operating revenues. For the 5 years preceding date of valuation, they were 79.67 percent. The ratios and net railway operating income (or deficit, appearing in italics), respectively, covering operations of the carrier for the years indicated have been as follows: 1927, 79.92, $20,136; 1928, 76.02, $87,411; 1929, 77.49, $86,601; 1930, 76.91, $37,937; 1931, 85.70 *$12,505*; 1932, 99.64, *$61,197*; 1933, 72.53, $36,506.

Profit and loss statement.—A condensed summary of the profit and loss accounts for the period January 1, 1917, to date of valuation, follows. Credits $2,500,687.02, debits $2,633,152.38, resulting in a debit balance of $132,465.36 as of date of valuation. The credits consist of the following: Profit on road and equipment sold $100, delayed income credits $45,574.18, unrefundable overcharges $3,959.47, donations $183,758.28, miscellaneous credits $2,267,295.09. The debits consist of the following: Debit balance as of January 1, 1917, for which no analysis was obtainable $347,856.22, net debit balance transferred from income $170,062.45, dividend appropriation of surplus $1,201,576.83, miscellaneous appropriations of surplus $2,500.00, loss on

retired road and equipment $30,914.98, delayed income debits $134,269.77, and miscellaneous debits, $745,972.13.

Dividends.—From 1917 to date of valuation, inclusive, the carrier declared and paid two dividends aggregating $1,201,576.83. Of this amount, $334,801.56 was paid in cash, $863,705.52 in investment securities, and $3,069.75 in accrued interest on the investment securities. The dividends were at the rate of 62.5 percent in 1922 and 237.89 percent in 1927.

Investment in Road and Equipment

The investment of the carrier in road and equipment, including land, on date of valuation is stated in its books as $62,072.66, of which the following is a general analysis:

Amount stated as investment in road and equipment as of June 30, 1917, for which no analysis was obtainable		$1,429,527.98
Additions and betterments, recorded money outlay		195,540.38
[fol. 631]		
Estimated value of property formerly owned by the American Warehouse & Trading Company, donated to this carrier under terms of agreement between the War Department and that company		$445,576.00
Donations, construction by War Department		166,451.78
Total		2,237,096.14
Less—		
Property sold or retired, credited at	$592,560.17	
Amounts transferred to accounts—		
Miscellaneous physical property	747,824.69	
Improvements on leased railway property	463,814.33	
Credit to reduce book figure for road and equipment, excluding land, to agree with an estimated value of such property as of June 30, 1917, charged to profit and loss	370,824.29	
		2,175,023.48
Total recorded as of date of valuation		62,072.66

The recorded money outlay of $140,336.39 for the two oil-electric locomotives of the carrier is included in its improvement on leased railway property account. If this amount were transferred to this account the balance of $62,072.66 would be increased to $202,409.05, and the item of $195,540.38 shown in the foregoing general analysis of this account would be increased to $335,876.77. The investment in road and equipment account includes an undetermined amount representing the cost of land classified herein as noncarrier.

Original Cost to Date

The original cost to date of road and equipment, including land, owned by the carrier and used for common-carrier purposes, cannot be definitely ascertained from the accounts

ing records alone. No accounting records were obtainable for the period prior to January 1, 1917.

However, the original cost of the carrier's property, except land, can be estimated as approximately $264,841, derived in the following manner.

The 1910-14 prices used in the determination of cost of reproduction new in primary valuations have been found to represent the average cost of railroad construction for a considerable period prior to 1914. The original cost of the road property, except lands, has been estimated on the 1910-14 price level with adjustments to give consideration to higher cost of property installed during the period 1916 to 1933, inclusive, as $116,091, including $6,665 for general expenditures applicable to such property.

To that amount has been added the costs, identifiable in the records of the carrier, for equipment $146,564, and estimates for equipment, not so identifiable, $2,186, including $33 for interest during construction, resulting in $264,841 as the approximate original cost to date of valuation of the entire common-carrier property owned and used, exclusive of lands. That amount is distributed to primary accounts, as follows:

[Fol. 632]

Account	Classes	Amount
	I. Road	
1	Engineering	5,211
3	Grading	,460
8	Ties	2,018
9	Rails	8,090
10	Other track material	3,497
11	Ballast	820
12	Tracklaying and surfacing	2,638
15	Crossings and signs	198
16	Station and office buildings	4,678
23	Wharves and docks	70,530
37	Roadway machines	97
44	Shop machinery	10,189
	Total road, except land	109,426
	II. Equipment	
52	Other locomotives	144,126
53	Freight-train cars	2,819
57	Work equipment	1,772
	Total	148,717
	III. General Expenditures	
71-75 & 77	Other than interest	3,283
76	Interest during construction	3,415
	Total	6,698
	Grand total, except land	264,841

Property used but not owned.—The carrier uses but does not own certain property leased June 19, 1906, from the Hoboken Land and Improvement Company, a noncarrier, consisting of 0.06 mile of yard track, shop facilities, and wharf and dock property located on lands described in the leases as plots "A", "B", and "C". The original cost to date of the above property used for common-carrier purposes has not been definitely ascertained. However, the original cost of the property, except land, can be estimated as approximately $91,836, on the basis herein stated as applied to the property of the carrier, including general expenditures. That amount is distributed to primary accounts, as follows:

Account	Classes	Amount
	I. Road	
1	Engineering	$4,122
3	Grading	26
8	Ties	131
9	Rails	198
10	Other track material	261
11	Ballast	27
12	Tracklaying and surfacing	133
20	Shops and engine houses	33,691
23	Wharves and docks	47,975
	Total road, except land	86,564
	III. General Expenditures	
71–75 & 77	Other than interest	2,597
76	Interest during construction	2,675
	Total	5,272
	Grand total, except land	91,836

[fol. 633] The approximate original cost to date of valuation of the common-carrier property, except land, used but not owned, leased from The Hoboken Rail Road Ware House and Steamship Connecting Company is $201,668, as detailed in the report on that company.

The cost of land owned and used for common-carrier purposes, as explained below, has not been definitely ascertained.

Cost of lands.—The carrier reports amounts aggregating $15,900 as the outlays by it in connection with lands owned. As shown in the books, that amount is the portion of $740,270.69 stated in an entry dated January 1921 as the total cost of land as of June 30, 1917, and is shown in that entry as applicable to lands devoted to transportation purposes.

The amount of $15,900 is made up on $3,500, assigned to lands classified herein as carrier, owned and used, and $12,400 assigned to lands classified herein as partly carrier and partly noncarrier. The balance of $724,370.69 is the portion assigned by the carrier to noncarrier lands, sold prior to date of valuation.

The returns made by the carrier also report land that was acquired with other property as a donation from the American Warehouse & Trading Company. This land is inventoried as carrier land, owned and used.

In addition to the foregoing, there has been inventoried to the carrier as carrier land, used but not owned, certain lands owned by the Hoboken Land and Improvement Company, for which returns in response to valuation order no. 7 have not been filed.

Cost of machinery and equipment.—The carrier made no report of the cost of machinery and equipment.

There has been inventoried to the carrier the following equipment, with recorded costs as determined from examination of the accounting records:

	Units	Costs
Equipment:		
Other locomotives	2	$144,125.83
Freight-train cars	4	1,688.16
Freight-train cars	4	.....
Work equipment	1	750.00
Work equipment	2	.....
Total		146,563.99

For the 4 units of freight-train cars and 2 units of work equipment, the costs of which were not identifiable in the records, the approximate original cost has been estimated at the prices applicable to the years in which the freight-train cars were acquired and at 1910-14 prices for the work equipment, as follows:

Freight-train cars	$1,131
Work equipment	1,022
Interest during construction	33
Total	2,186

Improvements on Leased Railway Property

The investment in improvements on leased railway prop-

erty on date of valuation is stated as $734,660.97, of which the following is a general analysis:

[fol. 634] Amount transferred from investment in road and equipment account for which an analysis was not obtainable	$463,814.31
Additions and betterments, recorded money outlay	308,948.66
Total	772,762.97
Less property sold or retired, credited at	38,101.96
Total recorded as of date of valuation	734,660.97

The recorded money outlay of $308,948.60 shown in the foregoing general analysis of the improvements on leased railway property account includes $140,336.39, the recorded cost of two oil-electric locomotives owned by the carrier. If that amount were transferred to the investment in road and equipment account, the recorded money outlay referred to above would be reduced to $168,612.21 and the balance of $734,660.97 in the improvements on leased railway property account at December 31, 1933, would be reduced to $594,324.58.

Miscellaneous Physical Property

The investment in miscellaneous physical property on date of valuation is stated as $3,172, a general analysis of which follows.

Amount transferred from investment in road and equipment, January 1921 stated as cost as of June 30, 1917, for which an analysis was not obtainable, except that given in the transfer entry:		
Cost of land $740,270.69, less $15,900 devoted to transportation purposes	$724,370.69	
House property at First Street	23,454.00	
		$747,824.69
Estimated value of property formerly owned by the American Warehouse & Trading Company, donated to this company under terms of an agreement between the War Department and that company		166,399.00
Recorded money outlay		258,862.98
Total		1,173,086.67
Less property sold or retired, credited at		1,169,914.67
Total recorded as of date of valuation		3,172.00

The above balance of $3,172 represents the recorded cost of a bulletin advertising rack, located at Fourteenth and Washington Streets, Hoboken.

Investment in Other Companies

The records reviewed indicate that the carrier recorded investments in other companies, with a par value of $1,309,206.45 and book value of $1,274,678.16, all of which were disposed of prior to date of valuation.

The considerations recorded as given in exchange for such investments were cash $590,471.71, road property $359,982.01, and miscellaneous physical property $324,224.44. Those recorded as received when disposed of were cash $433,426.25 and dividend paid $863,705.52. The difference between the considerations recorded given in the acquisition and those received in the disposal, being a profit of $22,453.61, was credited to profit and loss.

The investments surrendered in payment of dividend were as follows:

[fol. 635]	Par value	Book value
U. S. 4¼-percent Liberty bonds	$270,000.00	$262,061.87
Erie Land and Improvement Company first 6-percent mortgage	100,000.00	100,000.00
Hoboken Terminal Properties, Incorporated, capital stock	None	501,643.65
Total	370,000.00	863,705.52

Aids, Gifts, Grants, and Donations

The carrier made no report of aids, gifts, grants or donations. The report of the carrier upon the costs of its lands shows certain land acquired from the American Warehouse & Trading Company together with other property as a donation.

The property above referred to as donated by the American Warehouse & Trading Company was recorded at $611,975, of which $445,576 was charged by the carrier to its investment in road equipment account, and $166,399 to miscellaneous physical property account. The $611,975 was credited to account 779, Additions to Property Through Income and Surplus. All of the property represented by the charge to miscellaneous physical property, and the major portion of that represented by the charge to investment in road and equipment, was disposed of by sale prior to date of valuation.

In addition, the carrier recorded, through a credit to profit and loss account Donations, $183,758.28 as the value of donations to it by the United States Government, War Department, of which $166,451.78 was charged to invest-

ment in road and equipment and $17,306.50 was charged to material and supplies. The $166,451.78 charged to the investment in road and equipment account consisted of $151,390.78 for certain construction, and curvature reduction, of tracks in the Fourteenth Street yard, $5,003 for certain tools, office furniture and typewriters, 1 boiler, 1 launch, 1 crane, and 1 truck, and $10,058 for 2 locomotives.

Material and Supplies

The investment in material and supplies on date of valuation is stated in the books as $11,286.53. An inventory taken as of date of valuation indicated a shortage of $1,172.97 which has been adjusted by charges to operating expenses.

Leased Railway Property

The carrier uses on date of valuation property owned by other companies as indicated below.

Description of the property, the period and terms of use, and the rentals accrued and charged to income for the year ending on date of valuation follows:

Wholly used but not owned, owned by—

The Hoboken Rail Road Ware House and Steamship Connecting Company, tracks, 1.411 miles of main and 5.657 miles of other tracks in Hoboken, N. J., together with office building, freight house, platforms, track scale, and other miscellaneous facilities; term 99 years from June 19, 1906; annual rental, charged to rent for leased road	*Rental* $21,500.00
[fol. 636] Hoboken Land and Improvement Company, plots "A", "B", and "C", yard track 0.060 mile, shop facilities, and wharf and dock property in the city of Hoboken; term 99 years from June 19, 1906; annual rental, $8,000 for plots A and B and improvements thereon, subject to adjustment every 20 years. Plot C is subleased by the carrier from The Hoboken Rail Road Ware House and Steamship Connecting Company. Supplemental agreements dated February 26, 1929, adjusted the rental for the 20 years ending	

June 19, 1946, to $15,000 per annum for plots A and B and improvements thereon, charged to miscellaneous rents	$15,000.00

General Balance Sheet Statement

The general balance sheet statement of the carrier as of December 31, 1933, follows:

Assets

Investments:	
Investment in road and equipment	$62,072.66
Improvements on leased railway property	734,660.97
Miscellaneous physical property	3,172.00
Total	799,905.63
Current assets:	
Cash	24,682.51
Traffic and car-service balances receivable	60,495.21
Miscellaneous accounts receivable	29,089.45
Material and supplies	11,286.53
Total	125,553.70
Deferred assets, other deferred assets	24,043.65
Unadjusted debits, rents and insurance premium paid in advance	13,746.09
Grand total	963,249.07

Liabilities

Stock, capital stock	400,000.00
Funded debt, unmatured	198,304.07
Nonnegotiable debt to affiliated companies	198,555.19
Total	796,859.26
Current liabilities:	
Traffic and car-service balances payable	49,698.25
Audited accounts and wages payable	34,806.21
Miscellaneous accounts payable	1,285.71
Interest matured unpaid	3,993.09
Total	89,783.26

[fol. 637] Unadjusted credits:

Tax liability	$6,398.54
Accrued depreciation—	
Road	63,894.59
Equipment	5,503.28
Miscellaneous physical property	1,311.70
Other unadjusted credits	73,435.40
Total	150,543.51
Appropriated surplus; additions to property through income	58,528.40
Profit and loss, debit balance	*123,465.36*
Grand total	963,249.07

Lessor Company

The Hoboken Rail Road Ware House and Steamship Connecting Company

Introductory

The Hoboken Rail Road Ware House and Steamship Connecting Company, is a New Jersey corporation having its principal office at Hoboken, N. J. It is controlled by the Hoboken Land and Improvement Company through ownership of 70 percent of the outstanding capital stock. Records obtained do not indicate that it controls any common-carrier corporation.

The accounting records of this company for the period prior to 1903 could not be obtained, and those for the subsequent period were incomplete. Therefore, only partial information has been obtained from accounting records regarding its financial dealings, corporate operations, and investments. Certain data regarding its financial dealings were obtained from minute books.

Records reviewed indicate that the property was operated by its own organization to June 19, 1906, and since that date it has been operated under lease by the carrier, except during the period July 1, 1917, to July 1, 1927, when it was operated by the War Department of the United States Government.

Corporate History

The Hoboken Rail Road Ware House and Steamship Connecting Company was incorporated September 17, 1895,

under general laws of New Jersey, to construct, maintain, and operate a railroad in the "city of Hoboken, County of Hudson, New Jersey." The date of its organization was October 14, 1895.

Development of Fixed Physical Property

The owned mileage of the company consists of 1.411 miles of main line extending from a point near Eighteenth Street and Park Avenue to Fifth Street and River Road, in the city of Hoboken, N. J. It also owns 5.657 miles of yard tracks, a total of 7.068 miles of all tracks. The tracks were constructed or acquired by purchase on various dates both prior and subsequent to January 1, 1903. No details are available for track changes.

History of Corporate Financing

Syndicating, banking, and other financial arrangements.—The records reviewed do not indicate any syndicating arrangements.

The Hoboken Rail Road Ware House and Steamship Connecting Company has been financed in part by the sale of capital stock and in part by advances from the Hoboken Land and Improvement Company.

[fol. 638] *Capital stock.*—The authorized capital stock is $300,000 par value, shares $100 par value each, classified as common. The entire amount was issued and is outstanding on date of valuation. Records obtained indicate that $77,000 par value was issued at par for cash, $215,000 par value for land and rights, charged to investment in road and equipment at par, and $8,000 par value for consideration not determined.

Funded debt.—As of December 19, 1906, the company issued a 4½ percent bond of $196,000 par value to the Hoboken Land and Improvement Company at par in liquidation of nonnegotiable debt due the latter company. Of this amount, $141,500 has been retired with cash, leaving $54,500 outstanding on date of valuation.

Nonnegotiable debt to affiliated companies.—The recorded nonnegotiable debt to the Hoboken Land and Improvement Company aggregates $266,173.10, of which $248,918.10 was repaid. Disposition of the balance, $17,255, was

not determined from the records reviewed. Of the total incurred, $91,109.66 represents the balance as of December 31, 1903, for which no analysis was obtainable, $71,301.27 represents loans and rents payable, $73,000 represents property purchased and $30,762.17 represents interest accrued on advances. Repayments were made in the amounts of $2,918.10 in cash and $196,000 in funded debt issued.

Results of Corporate Operations

Income statement.—Owing to incomplete accounting records the results of corporate operations can be stated only for the period January 1, 1917, to date of valuation.

A condensed summary for the year ending December 31, 1933, and for the period January 1, 1917, to date of valuation, comprises the following: Income from lease of road, year $21,500, period $410,341.39; income from unfunded securities and accounts, period $913.30; railway tax accruals, year $2,943.60, period $36,293.62; interest on funded debt, year $2,494.45, period $69,156.26; maintenance of investment organization, year $171.65, period $6,868.12; and dividend appropriation of income, year $6,000, period $228,750; resulting in a credit balance for the year of $9,890.30, and for the period of $70,186.69, transferred to profit and loss.

Profit and loss statement.—A condensed summary for the period January 1, 1917, to date of valuation, comprises the following: Credits, credit balance as of December 31, 1916, for which no analysis was obtainable, $57,289.29; credit balance transferred from income $70,186.69; miscellaneous debit, adjustment of account rents receivable, $296.34; resulting in a credit balance of $127,179.64 on date of valuation.

Dividends.—From January 1, 1917, to date of valuation, dividends declared aggregated $228,750. Records obtained do not indicate payment otherwise than in cash. The dividends were at rates as follows: 4 percent in 1920, 1923, 1924, 1926, and 1927; 4¼ percent in 1925; 4½ percent in 1917, 1921, 1928, 1931, and 1932; 5 percent in 1919 and 1930; 5½ percent in 1918 and 1922; 6½ percent in 1929, and 2 percent in 1933.

Investment in Road and Equipment

The investment in road, including land, no equipment

being owned, on date of valuation is stated in the books as $474,680.81, analyzed as follows:

Balance as of January 1, 1903, for which complete analysis was not obtainable but which minute records indicate includes $153,000 par value of capital stock issued for land and rights		$339,590.77
[fol. 639]		
Additions and betterments, to June 19, 1906:		
Recorded money outlay	$16,851.19	
Nonnegotiable debt incurred for advances by Hoboken Land and Improvement Co.	73,000.00	
Capital stock issued at par for land and rights	62,000.00	
		$151,851.19
Total		491,441.96
Less property sold credited at		18,200.00
		473,241.96
Other item, charges not in accordance with present classification of accounts, transferable to accounts receivable or to other accounts. Value of material and supplies transferred to lessee		1,438.85
Total recorded as of date of valuation		474,680.81

Original Cost to Date

The original cost to date of common-carrier property owned but not used, leased to the carrier, has not been definitely ascertained, due to the absence of records. No accounting records were obtainable for the period prior to January 1903, during which period part of the original road was constructed. However, the approximate original cost to date of valuation of the common-carrier property, except land, owned but not used, leased to the carrier, can be estimated as $201,668, derived in the following manner:

The 1910-14 prices used in the determination of cost of reproduction new in primary valuations have been found to represent the actual cost of railroad construction for a considerable period prior to 1914. The original cost of the property, except lands, owned but not used, leased to the carrier, has been estimated on the 1910-14 price level, with adjustments to give consideration to higher cost of property installed during the period 1916 to 1933, inclusive, as $201,668, including $11,577 for general expenditures applicable to such property. That amount is distributed to primary accounts as follows:

Account	Classes	Amount
	I. Road	
1	Engineering	$9,052
3	Grading	4,168
8	Ties	13,067
9	Rails	29,125
10	Other track material	26,394
11	Ballast	5,277
12	Tracklaying and surfacing	14,381
13	Right-of-way fences	1,615
15	Crossings and signs	1,391
16	Station and office buildings	81,451
17	Roadway buildings	59
36	Paving	3,912
38	Roadway small tools	194
	Total road, except land	190,094
	III. General Expenditures	
71, 75 & 77	Other than interest	5,703
76	Interest during construction	5,874
	Total	11,577
	Grand total, except land	201,668

[fol. 640] The original cost of carrier lands, owned but leased to the carrier, has not been ascertained, as explained below.

Cost of lands.—The company made no report of the cost of lands owned by it. There have been inventoried to it certain lands, classified as carrier, owned, but leased to the carrier.

Cost of machinery and equipment.—The company made no report of machinery and equipment, and none has been inventoried to it.

Aids, Gifts, Grants, and Donations

The lessor made no report of aids, gifts, grants, or donations received by it, and none was found of record.

Leased Railway Property

All common-carrier property owned is leased to the carrier for a term of 99 years from June 19, 1906. The terms and rental arrangements for the year ending on date of valuation are given in the chapter on leased railway property in the report on the carrier.

General Balance Sheet Statement

The general balance sheet statement as of December 31, 1933, follows:

Assets	
Investment in road and equipment	$474,680.81
Current assets:	
Cash	9,106.73
Rents receivable	716.66
Total	9,823.39
Grand total	484,504.20

Liabilities	
Stock, capital stock	300,000.00
Long-term debt, funded debt unmatured	54,500.00
Current liabilities, unmatured interest accrued	81.72
Unadjusted credits, tax liability	2,742.84
Corporate surplus, profit and loss, credit balance	127,179.64
Grand total	484,504.20

Appendix 3

Analysis of Method for Determining Working Capital

The special information necessary to apply the method for determining working capital described in *Northampton & B. R. Co.*, 149 I. C. C. 263-72, has not been requested by a questionnaire sent to the carrier. The basic data for such information as is contained herein have been obtained from its annual report to us.

[fol. 640a] The recorded balance in material and supplies account on date of valuation is $11,287. This amount is about 4.97 percent of the railway operating expenses for the year ending on that date. Allowing for the use of material and supplies for purposes other than common carrier operations, the working capital in the form of material and supplies is found to be about $11,062.

A consideration of railway operating revenues, railway operating expenses, and railway tax accruals, for the year ended as of date of valuation, and balances in current operating asset and current operating liability accounts and the account for tax liability reported as of date of valuation, does not indicate that any invested cash working capital was used.

[fol. 641] EXHIBIT No. 33—WITNESS: E. A. HODKINSON

Hoboken Manufacturers R.R. Co.

Final value as of December 31, 1933:				
Owned and used		$300,000		
Used but not owned		1,325,000		
Total used				$1,625,000 (a)
Additions and betterments less retirements, as shown in annual reports to I. C. C.:				
Year ended December 31, 1934	Cr.	$6,280		
1935	Cr.	4,337		
1936				
1937		1,755	Cr.	8,862
Final value, less net retirements to December 31, 1937				$1,616,138

(a) Represents final value, as set forth by Interstate Commerce Commiss in Valuation Docket No. 1201, of the property used by the Hoboken Man facturers R. R. for common carrier purposes.

EXHIBIT 34 WITNESS: E.A. HODKINSON

Form R. A. 1.

State of New Jersey

STATE TAX DEPARTMENT

DIVISION OF ENGINEERING AND RAILROAD TAXES

UNCLASSIFIED RAILROADS

VALUATION AND ASSESSMENT FOR STATE AND LOCAL USES FOR THE YEAR 1938

VALUATION

Assessed Valuation of the HOBOKEN RAILROAD, WAREHOUSE & STEAMSHIP CONNECTING CO.	
For Main Stem,	374,105.00
For Franchise,	2,000.00
For tangible personal property necessary for and used in State Commerce	760.00
Total assessable for State uses	376,865.00
For real estate used for railroad purposes other than main Stem,	155,585.00
Aggregate assessed valuation	531,570.00

TAX

Tax for State uses, at average tax rate of $ 4.535 per $100 valuation,	17,044.57
Tax for uses of taxing districts on real estate used for railroad purposes, other than main stem, at local rates,	7,902.23
Total Tax,	24,946.80

Form R. A. 21

SECOND CLASS PROPERTY

Sheet No. 15

STATE OF NEW JERSEY
STATE TAX DEPARTMENT
Division of Engineering and Railroad Taxes

[redacted] RAILROAD, TERMINAL & STEAMSHIP COMPANY CO.

MAIN LINE

Taxing District of [redacted] CITY, County of [redacted]

VALUATION AND ASSESSMENT OF REAL ESTATE OTHER THAN MAIN STEM, FOR THE YEAR 1930

DESCRIPTION OF PROPERTY		PRESENT VALUE Amount	PRESENT VALUE Total	Local Tax Rate	Tax For Taxing District	
[redacted] ADDITION						
Land outside main stem, caveau east of main stem, at Fifth Street, Plot H	0.787 Ac.	[redacted]				
Land outside main stem, caveau east of main stem, at Sixth Street, Plot I	0.491 Ac.	[redacted]				
Land outside main stem, caveau north of main stem, extending from easterly line of Hudson Street produced westerly, Plot K	0.880 Ac.	[redacted]				
Land outside main stem, caveau west of main stem, corner 19th Street and Park Avenue	0.086 Ac.	[redacted]				
Sidings outside main stem (in ballast)	3,912 Ft.	3,195				
Wire screening at platform #5, Holland Pier, foot of 6th Street		117				
Office, freight house and covered platform, 9th Street, 88½' x 196'		17,080				
Freight platform to serve Holland American Line, 15' x 197'		1,432				
Belgian block paving at freight shed, 9th Street		3,619				
Belgian block paving in yard, Bloomfield Street, 899 sq. yds.		510				
	Total for Road		$ 155,585	[redacted]	7,902	

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A R-7

Sheet No. _____

LENGTH OF MAIN STEM

State of New Jersey.

State Tax Department
Division of Engineering and Railroad Taxes

HOBOKEN R.R. WAREHOUSE & STEAMSHIP CONNECTING CO Railroad Co.

MEASUREMENT OF MAIN STEM FOR THE YEAR 1930

	MILES
LENGTH OF MAIN STEM IN NEW JERSEY	1.514

LENGTH OF MAIN STEM IN TAXING DISTRICTS.

TAXING DISTRICT		LENGTH IN MILES.
Hudson County,	Weehawken Township	0.095
	Hoboken City	1.252
Total length, Main Line .		1.347
NUMBER ONE BRANCH		
Hudson County,	Hoboken City	0.167
Total length, Main Line & Branch		1.514

TAXING DISTRICT	LENGTH IN MILES.

TAXING DISTRICT.	LENGTH IN MILES.

Form R. A. 31.

State of New Jersey

STATE TAX DEPARTMENT

DIVISION OF ENGINEERING AND RAILROAD TAXES

[redacted] RAILROAD

VALUATION AND ASSESSMENT FOR STATE AND LOCAL USES FOR THE YEAR 1930

VALUATION

Assessed Valuation of the [redacted] RAILROAD CO.	
For Main Stem,	$ 19,512.00
For Franchise	1,000.00
For tangible personal property necessary for and used in State Commerce;	88,367.00
Total assessable for State uses,	108,879.00 ✓
For real estate used for railroad purposes other then main Stem,	409,562.00 ✓
Aggregate assessed valuation,	$ 518,441.00

TAX

Tax for State uses, at average tax rate of $ 4.555 per $100 valuation,	$ 4,937.66 ✓
Tax for uses of taxing districts on real estate used for railroad purposes, other than main stem, at local rates,	20,800.01 ✓
Total Tax,	$ 25,737.67 ✓

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Form E. A. 21

SECOND CLASS PROPERTY

Sheet No. 13

STATE OF NEW JERSEY

STATE TAX DEPARTMENT

Division of Engineering and Railroad Taxes

HOBOKEN MANUFACTURER'S RAILROAD CO.

Taxing District of HOBOKEN CITY, County of HUDSON

VALUATION AND ASSESSMENT OF REAL ESTATE OTHER THAN MAIN STEM, FOR THE YEAR 1930

DESCRIPTION OF PROPERTY		PRESENT VALUE Amount	PRESENT VALUE Total	Local Tax Rate	Tax For Taxing District
WEEHAWKEN ADDITION					
Land outside main stem, encloses ex slip, Sea Train Co., Block 269, Lot 2A	2.166 Ac.	$ 146,805 00			
Land outside main stem, encloses between main stem, N.Y.S.W.& S.C.Co., Main Line and Nr. Pl., Block 269, Plot C and C-1	1.351 Ac.	100,398 00			
Land outside main stem, encloses 11th and Hudson Streets, Plot 5	0.591 Ac.	85,751 00			
Sidings outside main stem (in ballast)	2,118 Ft.	6,588 00			
Chain link fence at slip, Sea Train Co.		1,277 00			
Freight platform, foot of 14th Street		500 00			
Motor car house, brick, 80' x 100'		20,000 00			
Motor car shelter, Bloomfield Avenue		80 00			
Betterment to Scandanavian trestle, Weehawken Cove		3,750 00			
Freight platform, covered, foot of 7th Street, Wilson Line Pier		1,500 00			
Pier, Sea Train Co., 40' x 630'		14,100 00			
Transfer crane, capacity 125 tons, Sea Train Co.		58,545 00			
Transformer and meter house, Sea Train Co.		678 00			
Oil and water lines, Sea Train Co.		630 00			
	Total for Road		$ 409,762 00	85.081	80,880 01

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Sheet No. _____

LENGTH OF MAIN STEM

State of New Jersey.

State Tax Department
Division of Engineering and Railroad Taxes

HOBOKEN MANUFACTURER'S RAILROAD CO.

MEASUREMENT OF MAIN STEM FOR THE YEAR 1918

	MILES
LENGTH OF MAIN STEM IN NEW JERSEY	0.062

LENGTH OF MAIN STEM IN TAXING DISTRICTS.

TAXING DISTRICT.		LENGTH IN MILES.	TAXING DISTRICT.	LENGTH IN MILES.	TAXING DISTRICT.	LENGTH IN MILES.
Hudson County,	Hoboken City	0.062				

[fol. 648] EXHIBIT 35

Witness: E. A. Hodkinson

Statement Showing Loaded and Empty Car Movement—Hoboken Manufacturers Railroad for Years 1936 and 1937

(Authority Annual Reports to Interstate Commerce Commission)

Page 509	*For 1936*
Number of loaded cars	15,701
Number of empty cars	4,775
	20,476

Page 509	*For 1937*
Number of loaded cars	16,579
Number of empty cars	4,353
	20,932

EXHIBIT No. 36 WITNESS: E.A. HODKINSON

HISTORY OF ALLOWANCES TO HOBOKEN MANUFACTURERS RAILROAD ON CARLOAD TRAFFIC NOT LOADED OR UNLOADED BY CARRIER OR AT ITS EXPENSE

Prior to July 1, 1918		20 cents per ton	
July 1, 1918		25 cents per ton	Note 1
	Territory A	Territory B	
August 26, 1920	35 cents per ton	32 cents per ton	Note 2
July 1, 1922	32 cents per ton	30 cents per ton	Note 3
January 1, 1927		60 cents per ton	Note 4
June 1, 1927		60 cents per ton	Note 5
March 28, 1938			
April 5, 1938	10%	66 cents per ton	Note 6
April 6, 1938			
April 11, 1938	5%	63 cents per ton	
April 15, 1938			

EXPLANATION OF NOTES

1 - 25% Increase General Order 28 - Authorized by C.R.Capps Assistant to Regional Director U.S.R.R. - Administration.

2 - Ex Parte 74 Increase - 40% Official Territory - intraterritorially - 33-1/3% Official and Other Territories interterritorially.

TERRITORY A - includes points within the following limits:
The Atlantic Seaboard from the Canadian Border to Norfolk, Va.
The Main Line of the N.& W.Ry. from Norfolk,Va., to Kenova,W.Va.
The Main Line of the C.& O.Ry. from Kenova,W.Va., to Cincinnati,Ohio
The Ohio River to Cairo, Ill.
The Mississippi River to the mouth of the Illinois River at or near Grafton, Ill.
The Illinois River from Grafton,Ill., to Pekin,Ill.
A Line South and East of the A.T.& S.F. from Pekin thru Joliet and Streator to Chicago,Ill.
A Line drawn from Chicago,Ill., to include Southern Peninsula of Michigan; thence
International Boundary to the Atlantic Seaboard;
Including that portion of Virginian Ry. extending South of Southern Boundary; and
Excluding those portions of Sou.Ry., L.& N.R.R., M.& O.R.R., A.C.L.R.R. and S.A.L.Ry., extending North of Southern Boundary.

TERRITORY B - includes all other territory not shown in Note 4.

3 - 10% Reduction I.C.C. Docket 13295.

4 - Compromise settlement reached with Hoboken Manufacturers Railroad on traffic to and from Trunk Line Territory.

5 - Compromise settlement reached with Hoboken Manufacturers Railroad on traffic to and from all territories other than Trunk Line Territory.

6 - Ex Parte 123 Increases - The various dates shown are the effective dates of the increases.

The 66 cent allowance is an increase of 230% over the original 20 cent allowance.
The 63 cent allowance is an increase of 215% over the original 20 cent allowance.

Had the Hoboken Manufacturers Railroad allowance been increased in accordance with the general rate increases and reductions, its allowance would be as follows:

	40% Increase	Ex Parte 74		33-1/3% Increase	Ex Parte 74
Prior to 5%	20 cents	1914		20 cents	1914
Increase 5%	21 cents	1915		21 cents	1915
Increase 15%	24 cents	1917		24 cents	1917
Increase 25%	30 cents	1918		30 cents	1918
Increase 40%	42 cents	1920	Increase 33-1/3%	40 cents	1920
Reduction 10%	38 cents	1922		36 cents	1922
Ex Parte Increase 10%	42 cents	1938		40 cents	1938
Ex Parte Increase 5%	40 cents	1938		38 cents	1938

42 cents represents 110% Increase. 40 cents represents 100% Increase. 38 cents represents 90% Increase.

REVISED EXHIBIT No. 37 WITNESS: E.A. HODKINSON

HOBOKEN MANUFACTURER'S R.R. Vs. A.C.& Y.RY., ET AL

STATEMENT COVERING THE CARLOAD MOVEMENT VIA SEATRAIN LINES TO DESTINATIONS 100 MILES OR OVER FROM NEW YORK,N.Y., DURING MAY, JULY, SEPTEMBER AND NOVEMBER,1936, AND JANUARY AND MARCH, 1937

NORTHBOUND

SHIPMENTS ENTITLED TO FREE LIGHTERAGE

COMMODITIES SUBJECT TO 5% INCREASE UNDER EX PARTE 123

Commodity	Origin	Destination	No. of Cars	Weight
Hides, Pelts or Skins:				
Green Salted Hides.	Ft.Worth . . .Tex.	Winchester . Mass.	1	60,525
G.S. Hides.	Dallas . . . .Tex.	Endicott . . .N.Y.	2	115,837
G.S. Hides.	New Orleans. . La.	Kaulmont . . . Pa.	2	89,461
G.S. Hides.	New Orleans. . La.	Noxen. . . . . Pa.	1	65,592
Rice:				
Rice.	Belle Chasse . La.	Buffalo. . . .N.Y.	1	40,000
Vegetables:				
Tomatoes.	Havana . . . .Cuba	Montreal . . .P.Q.	3	74,000
Tomatoes.	Havana . . . .Cuba	Toronto, Ont.-Can.	6	194,775
Tomatoes.	Havana . . . .Cuba	Portland . . . Me.	1	24,500
Tomatoes.	Havana . . . .Cuba	Baltimore. . . Md.	1	24,975
Tomatoes.	Havana . . . .Cuba	Buffalo. . . .N.Y.	3	72,625
Tomatoes.	Havana . . . .Cuba	Pittsburgh . . Pa.	10	248,450

TOTAL CARS - 31
Weight, Pounds, 1,010,740 - Tons, 505
Average Weight per Car - Pounds, 32,604 - Tons, 16.3

Hoboken Manufacturer's R.R. Revenue - $1.35 cents per ton $682.29
Hoboken Manufacturer's R.R. Revenue - .60 cents per ton $303.00
Hoboken Manufacturer's R.R. Revenue - 63 cents per ton $318.15
Hoboken Manufacturer's R.R. Revenue - Per Car $1.35 Basis $ 22.01
Hoboken Manufacturer's R.R. Revenue - Per Car 60 cents Basis $ 9.77
Hoboken Manufacturer's R.R. Revenue - Per Car 63 cents Basis $10.26

COMMODITIES SUBJECT TO 10% INCREASE UNDER EX PARTE 123

Commodity	Origin	Destination	No. of Cars	Weight
Alcohol:				
Ethyl Alcohol . . .	New Orleans. . La.	Boston . . . Mass.	1	41,896
Asphalt:				
Asphalt	Havana . . . .Cuba	Suspension Bridge . . .N.Y.	1	99,260
Asphalt	Havana . . . .Cuba	Akron. . . . .Ohio	4	380,154
Asphalt	Havana . . . .Cuba	Fremont. . . .Ohio	2	179,982
Asphalt	Havana . . . .Cuba	Fremont. . . .Ohio	1	88,801
Bags, Paper:				
Wrapping Paper and Ptd. Paper Bags. .	New Orleans. . La.	Oswego . . . .N.Y.	3	187,160
Wrapping Paper and Paper Bags	Bastrop. . . . La.	Rochester. . .N.Y.	1	65,179
Paper Bags.	Belle Chasse . La.	Rochester. . .N.Y.	1	40,070
Paper Bags.	New Orleans. . La.	Rochester. . .N.Y.	1	50,828
Paper Bags and Wrapping Paper . . .	Advance. . . . La.	Utica. . . . .N.Y.	1	40,190
Wrapping Paper and Paper Bags	New Orleans. . La.	Lewistown. . . Pa.	1	53,487
Paper Bags and Wrapping Paper . . .	New Orleans. . La.	Philadelphia . Pa.	2	92,678
Paper Bags and Wrapping Paper . . .	New Orleans. . La.	Williamsport . Pa.	1	47,120
Board, Wall or Fibre:				
Fibre Board	Laurel . . . Miss.	Springfield. Mass.	1	56,200
Wall Board.	Marrero. . . . La.	Auburn . . . .N.Y.	1	45,200
Board, Wall or Fibre:				
Fibreboard Wallboard.	Marrero. . . . La.	Cambridge. . .N.Y.	1	55,640
Fibreboard.	Belle Chasse . La.	Cobleskill . .N.Y.	1	91,600
Wallboard	Seatrain Lines . .	E.Aurora . . .N.Y.	1	50,300
Wallboard	New Orleans. . La.	Elmira . . . .N.Y.	1	52,300
Wall Board.	Marrero. . . . La.	Hudson . . . .N.Y.	3	136,720
Fibreboard Wallboard.	New Orleans. . La.	Liberty. . . .N.Y.	1	49,240
Wallboard	New Orleans. . La.	Liberty. . . .N.Y.	1	49,240
Wood Pulpboard. . . .	New Orleans. . La.	Oswego . . . .N.Y.	4	193,956
Wallboard	Marrero. . . . La.	Saratoga Spgs.N.Y.	1	55,700
Fibreboard Wallboard.	New Orleans. . La.	Williamsville.N.Y.	1	36,000
Fertilizer:				
Animal Tankage. . . .	Havana . . . .Cuba	Woodstown. . .N.J.	2	122,560
Fibre:				
Sisal Fibre	Havana . . . .Cuba	Brantford.Ont-Can.	12	612,648
Sisal Fibre	New Orleans. . La.	Brantford,Ont-Can.	11	508,556
Sisal	Havana . . . .Cuba	Auburn . . . .N.Y.	4	255,920
Fish:				
Canned Shrimp	Belle Chasse . La.	Buffalo. . . .N.Y.	2	81,927
Shrimp.	New Orleans. . La.	Buffalo. . . .N.Y.	2	103,966
Fruit, Fresh:				
Fresh Pineapples. . .	Havana . . . .Cuba	Belleville . . . Ont.-Can.	1	24,000
Fresh Pineapples. . .	Havana . . . .Cuba	Hamilton.Ont.-Can.	1	24,000
Fresh Pineapples. . .	Havana . . . .Cuba	Kingston.Ont.-Can.	1	24,000
Fresh Pineapples. . .	Havana . . . .Cuba	Sachine. . . .P.Q.	6	144,000

Commodity	Origin	Destination	No. of Cars	Weight
it, Fresh:				
Pineapples	Havana. . . .Cuba	London . Ont.-Can.	2	48,000
Pineapples	Havana. . . .Cuba	Montreal . . .P.Q.	43	1,028,000
resh Pineapples	Havana. . . .Cuba	Ottawa . . . .Ont.	7	168,000
Pineapples	Havana. . . .Cuba	Petersboro . . . . Ont.-Can.	1	24,000
resh Pineapples	New Orleans . La.	Toronto. Ont.-Can.	1	24,000
Pineapples	Havana. . . .Cuba	Toronto. Ont.-Can.	1	39,877
Pineapples	Havana. . . .Cuba	Toronto. Ont.-Can.	2	48,000
Pineapples	Havana. . . .Cuba	Toronto. Ont.-Can.	3	72,000
Pineapples	Havana. . . .Cuba	Baltimore. . . Md.	7	168,100
Pineapples	Havana. . . .Cuba	Boston . . . Mass.	6	144,000
Pines.	Havana. . . .Cuba	Buffalo. . . .N.Y.	8	192,000
resh Cuban Pine-apples.	Havana. . . .Cuba	Norwich. . . .N.Y.	3	72,000
Pines.	Havana. . . .Cuba	Rochester. . .N.Y.	10	240,000
Pines.	Havana. . . .Cuba	Syracuse . . .N.Y.	1	24,000
Cuban Pineapples	Havana. . . .Cuba	Altoona. . . . Pa.	3	72,000
Pineapples	Havana. . . .Cuba	Philadelphia . Pa.	14	336,000
Pineapples	Havana. . . .Cuba	Pittsburgh . . Pa.	3	72,000
chinery & Machines:				
Machinery.	Houston . . .Tex.	Albany . . . .N.Y.	1	36,540
tfits:				
Contractors Outfits.	New Orleans . La.	Philadelphia . Pa.	3	111,840
troleum:				
Lub. Grease.	New Orleans . La.	Marcus Hook. . Pa.	3	151,749
Lub. Grease.	New Orleans . La.	Stoneham . . . Pa.	2	100,351
lt:				
Salt	Belle Chasse. La.	Montreal.Que.-Can.	3	301,660
Rock Salt.	New Orleans . La.	West Toronto .Ont.	3	300,000
Bags Crushed Rock Salt.	New Orleans . La.	Binghamton . .N.Y.	2	100,000
Rock Salt.	New Orleans . La.	Buffalo. . . .N.Y.	1	100,000
Rock Salt.	New Orleans . La.	Schenectady. .N.Y.	1	100,045
Crushed Rock Salt.	New Orleans . La.	Richmond . . . Va.	3	300,000
Crushed Rock Salt.	Weeks Island. La.	Salem. . . . . Va.	1	100,000
rap:				
Scrap Tin Plate.	Belle Chasse. La.	Neville Island.Pa.	11	665,560
Scrap Zinc	New Orleans . La.	Philadelphia . Pa.	1	44,640
gar:				
Sugar.	Havana. . . .Cuba	Pittsfield . Mass.	1	40,260
Sugar.	Havana. . . .Cuba	Springfield. Mass.	8	351,474

Commodity	Origin	Destination	No. of Cars	Weight
Sugar:				
Cane Syrup Sugar	Havana. . . .Cuba	Battle Creek.Mich.	2	113,560
Bags Sugar	Havana. . . .Cuba	Detroit. . . Mich.	7	683,850
Sugar.	Havana. . . .Cuba	Albany . . . .N.Y.	3	120,900
Bags Sugar	Havana. . . .Cuba	Binghamton . .N.Y.	7	344,277
Sugar.	New Orleans . La.	Binghamton . .N.Y.	1	60,300
Sugar.	Havana. . . .Cuba	Fulton . . . .N.Y.	1	100,750
Refined Sugar in Bags.	Havana. . . .Cuba	Horseheads . .N.Y.	1	40,150
Sugar.	Havana. . . .Cuba	Malone . . . .N.Y.	1	40,200
Sugar.	Havana. . . .Cuba	Rensselaer . .N.Y.	1	40,200
Sugar.	Havana. . . .Cuba	Rochester. . .N.Y.	2	130,975
Sugar.	Havana. . . .Cuba	Syracuse . . .N.Y.	3	257,025
Sugar.	Havana. . . .Cuba	Utica. . . . .N.Y.	2	80,505
Bags Hershey Sugar.	Havana. . . .Cuba	Utica. . . . .N.Y.	1	40,200
Sugar.	Havana. . . .Cuba	Waddington . .N.Y.	1	40,220
Sugar.	Havana. . . .Cuba	Watertown. . .N.Y.	3	120,650
Sugar.	Weehawken . .N.J.	Wellsville . .N.Y.	1	40,200
Bags Granulated Sugar	Havana. . . .Cuba	Curtice. . . .Ohio	1	50,375
Refined Sugar.	New Orleans . La.	Orrville . . .Ohio	4	201,000
Refined Sugar.	Seatrain Lines. .	Harrisburg . . Pa.	2	120,900
Bags Sugar	Havana. . . .Cuba	Pittsburgh . . Pa.	1	50,375
Bags Sugar	EX Hoboken Shore R.R. . . . .N.J.	Scranton . . . Pa.	3	120,613
Sugar.	Weehawken . .N.J.	Sharon . . . . Pa.	2	120,600
Bags Sugar	Havana. . . .Cuba	Wilkes Barre . Pa.	3	130,600
Sugar.	Havana. . . .Cuba	Wilkes Barre . Pa.	1	60,450
Syrup:				
Molasses	New Orleans . La.	Buffalo. . . .N.Y.	2	105,249
Molasses	Weehawken . .N.J.	East Buffalo .N.Y.	2	105,179
Inverted Syrups.	Havana. . . .Cuba	Philadelphia . Pa.	4	360,300
Tin Plate:				
Tin Plate Scrap Waste	Havana. . . .Cuba	Neville Island.Pa.	4	409,990
Vehicle Parts:				
Auto Parts	Belle Chasse. La.	Detroit. . . Mich.	1	42,954*
Auto Parts	Belle Chasse. La.	Detroit. . . Mich.	1	48,167*
Auto Parts	Belle Chasse. La.	Detroit. . . Mich.	1	53,153*
Auto Parts	Belle Chasse. La.	Detroit. . . Mich.	1	46,957*
Auto Parts	Belle Chasse. La.	Detroit. . . Mich.	1	43,114*
Auto Parts and Typewriters	Belle Chasse. La.	Detroit. . . Mich.	1	44,908*

* Includes several items.

TOTAL CARS - 310
Weight - Pounds, 14,084,520 - Tons, 7,042
Average Weight per car - Pounds, 45,434 - Tons, 22.7

Hoboken Manufacturer's R.R. Revenue - $1.35 cents per ton $9,507.05
Hoboken Manufacturer's R.R. Revenue - 60 cents per ton $4,225.20
Hoboken Manufacturer's R.R. Revenue - 66 cents per ton $4,647.20
Hoboken Manufacturer's R.R. Revenue - Per Car $1.35 Basis $30.67
Hoboken Manufacturer's R.R. Revenue - Per Car 60 cents Basis $13.63
Hoboken Manufacturer's R.R. Revenue - Per Car 66 cents Basis $14.98

STATEMENT COVERING THE CARLOAD MOVEMENT VIA SEATRAIN LINES TO DESTINATIONS 100 MILES OR OVER FROM NEW YORK,N.Y., DURING MAY, JULY, SEPTEMBER AND NOVEMBER,1936, AND JANUARY AND MARCH, 1937

NORTHBOUND

SHIPMENTS NOT ENTITLED TO FREE LIGHTERAGE

COMMODITIES SUBJECT TO 5% INCREASE UNDER EX PARTE 123

Commodity	Origin	Destination	No. of Cars	Weight	Commodity	Origin	Destination	No. of Cars	Weight
erage Stock:					Lumber or Veneer:				
arrel Staves	Plaquemine . .La.	Winchester. . .Mass.	1	51,900	Lumber.	Plaquemine . .La.	Eddystone . . . .Pa.	2	100,500
taves.	Melville , . .La.	Philadelphia. . .Pa.	1	70,240					
taves.	Plaquemine . .La.	Eddystone . . . .Pa.	1	48,540	Oils, Cotton Seed Foots	Gretna . . . .La.	Philadelphia. . .Pa.	1	74,760
taves.	Plaquemine . .La.	Philadelphia. . .Pa.	2	107,300					
					Vegetables:				
es, Pelts or Skins:					Tomatoes.	Havana . . . Cuba	Hartford. . . .Conn.	1	24,500
attle Hides.	New Iberia . .La.	Peabody . . . .Mass.	2	96,622	Tomatoes.	Havana . . . Cuba	Boston. . . . .Mass.	5	122,100
reen Salted Hides. .	Belle Chasse .La.	Manchester. . . N.H.	8	512,779					

TOTAL CARS: 24

Weight - Pounds, 1,209,241 - Tons, 605
Average Weight per car - Pounds, 50.385 - Tons, 25.2

Hoboken Manufacturer's R.R. Revenue 60 Cents Per Ton, $363.00
Hoboken Manufacturer's R.R. Revenue 63 Cents Per Ton, $381.15
Hoboken Manufacturer's R.R. Revenue - Per Car 60 Cents Basis, $15.13
Hoboken Manufacturer's R.R. Revenue - Per Car 63 Cents Basis, $15.56

COMMODITIES SUBJECT TO 10% INCREASE UNDER EX PARTE 123

Commodity	Origin	Destination	No. of Cars	Weight	Commodity	Origin	Destination	No. of Cars	Weight
hol:					Black-Carbon:				
hyl Alcohol	Seatrain Lines. .	Philadelphia. . .Pa.	4	216,048	Carbon Black.	Sanford . . .Tex.	Chicopee Falls.Mass.	4	265,740
k - Carbon:					Carbon Black.	New Orleans . La.	No.Brookfield .Mass.	2	103,550
rbon Black.	Borger . . . Tex.	Montreal. . . . P.Q.	3	91,925	Carbon Black.	Borger . . . Tex.	No.Brookfield .Mass.	1	56,675
rbon Black.	Borger . . . Tex.	Sherbrooke. . . Que.	1	43,400	Carbon Black.	Syare. . . .Okla.	Black Rock. . . N.Y.	1	45,200
rbon Gas Black. . .	Borger . . . Tex.	Chicopee Falls.Mass.	1	66,100	Carbon Black.	New Orleans . La.	Buffalo . . . . N.Y.	1	44,240
rbon Black.	Sterling . . .La.	Boston. . . . .Mass.	1	40,000	Carbon Black.	Marshall. . .Tex.	Buffalo . . . . N.Y.	1	43,444
rbon Gas Black. . .	Weehawken. . N.J.	Chicopee Falls.Mass.	1	64,120	Carbon Black.	Coltexo . . .Tex.	Chicopee Falls.Mass.	1	70,580
rbon Gas Black. . .	Borger . . . Tex.	Chicopee Falls.Mass.	1	67,500	Carbon Black.	Marshall. . .Tex.	Fairport. . . . N.Y.	2	87,111
rbon Black.	Borger . . . Tex.	Chicopee Falls.Mass.	1	65,640	Carbon Black.	New Orleans . La.	Franklin SpringsN.Y.	2	83,300
rbon Black.	Borger . . . Tex.	Chicopee Falls.Mass.	1	65,500	Carbon Black.	New Orleans . La.	Franklin SpringsN.Y.	1	31,226
rbon Gas Black. . .	Borger . . . Tex.	Chicopee Falls.Mass.	1	64,920	Carbon Black.	Borger. . . .Tex.	Franklin SpringsN.Y.	3	114,536
rbon Black.	Borger . . . Tex.	Chicopee Falls.Mass.	12	768,140	Carbon Black.	Borger. . . .Tex.	Johnson City. . N.Y.	1	51,150
rbon Black.	Coltexo. . . .Tex.	Chicopee Falls.Mass.	2	127,700	Carbon Black.	Coltexo . . .Tex.	Johnson City. . N.Y.	2	103,300
rbon Gas Black. . .	Pampa. . . . Tex.	Chicopee Falls.Mass.	12	790,660	Carbon Black.	Eliasville. .Tex.	Johnson City. . N.Y.	2	102,800
rbon Gas Black. . .	Pampa. . . . Tex.	Chicopee Falls.Mass.	9	573,560	Carbon Black.	Magic City. .Tex.	Johnson City. . N.Y.	2	102,240
								3	154,200

COMMODITIES SUBJECT TO 10% INCREASE UNDER EX PARTE 123

Commodity	Origin	Destination	No. of Cars	Weight
Black - Carbon:				
Carbon Black.	Parks . . . .Tex.	Johnson City. . N.Y.	9	469,350
Carbon Black.	Parks . . . .Tex.	Johnson City. . N.Y.	4	208,600
Carbon Black.	Lusk. . . . .Wyo.	Johnson City. . N.Y.	1	51,400
Carbon Black.	Borger. . . .Tex.	Schenectady . . N.Y.	1	31,200
Carbon Black.	Fowler. . . . La.	Waterford . . . N.Y.	1	41,550
Carbon Black.	Monroe. . . . La.	Waterford . . . N.Y.	1	41,550
Carbon Black.	Eliasville. .Tex.	Waterford . . . N.Y.	1	52,370
Carbon Black.	Wichita Falls Tex.	W.Waterford . . N.Y.	1	52,370
Carbon Black.	Havana. . . .Cuba	Conshohocken. . .Pa.	7	357,708
Carbon Black.	Monroe. . . . La.	Keplers Mills . .Pa.	1	20,000
Carbon Black.	New Orleans . La.	Keplers Mills . .Pa.	3	112,250
Carbon Black.	Macarco . . . La.	Philadelphia. . .Pa.	10	385,666
Carbon Black.	Borger. . . .Tex.	Philadelphia. . .Pa.	2	83,300
Carbon Black.	Coltexo . . .Tex.	Philadelphia. . .Pa.	7	266,000
Board, Wall or Fibre:				
Fibreboard Wallboard.	Marrero . . . La.	Lewistown . . . .Me.	2	122,640
Wallboard	Marrero . . . La.	Chicopee Falls.Mass.	1	65,900
Fibreboard Wallboard.	Marrero . . . La.	Chicopee Falls.Mass.	9	234,000
Fibreboard Wallboard.	Marrero . . . La.	Dover . . . . .Mass.	1	57,200
Fibreboard.	Belle Chasse. La.	East Hampton. .Mass.	1	52,900
Wallboard	Marrero . . . La.	Providence. . . R.I.	7	364,840
Wallboard	Marrero . . . La.	Providence. . . R.I.	1	36,000
Fibreboard Wallboard.	Marrero . . . La.	St.Johnsbury. . .Vt.	1	55,640
Bones:				
Animal Charcoal . . .	New Orleans . La.	Philadelphia. . .Pa.	7	350,700
Bones, N.O.I.B.N. . .	Havana. . . .Cuba	Philadelphia. . .Pa.	1	66,300
Fertilizer:				
Animal Blood.	Havana. . . .Cuba	Tennent . . . . N.J.	2	146,040
Fruit, Fresh:				
Pineapples.	Havana. . . .Cuba	Hartford. . . .Conn.	4	96,000
Pineapples.	Havana. . . .Cuba	Boston. . . . .Mass.	1	24,000
Lumber or Veneer:				
Cuban Mahogany Lumber	Havana. . . .Cuba	Haspeler. .Ont.,Can.	1	91,383
Manganese:				
Manganese Bulk. . . .	Havana. . . .Cuba	Alloy . . . . .W.Va.	1	80,687
Ores:				
Chrome Ore.	Havana. . . .Cuba	Chester. . . . .Pa.	1	93,600
Petroleum:				
Gasoline.	Baton Rouge . La.	East Hartford .Conn.	3	160,343
Rosin	De Quincy . . La.	Waterford. . . .Conn.	1	37,740
Salt:				
Salt.	Belle Chasse. La.	Portland. . . . .Me.	1	100,880
Sugar:				
Sugar	New Orleans . La.	Hartford. . . .Conn.	1	80,400
Syrup:				
Molasses.	Havana. . . .Cuba	Montreal. . . . P.Q.	6	662,113
Molasses.	Havana. . . .Cuba	Boston. . . . .Mass.	1	93,961
Molasses.	Havana. . . .Cuba	Boston. . . . .Mass.	4	378,115

TOTAL CARS: 186
Weight - Pounds, 10,129,201 - Tons, 5,065
Average Weight Per Car - Pounds or Tons.

Hoboken Manufacturer's R.R. Revenue 60 Cents Per Ton, $3,039.00
Hoboken Manufacturer's R.R. Revenue 66 Cents Per Ton, $3,342.90
Hoboken Manufacturer's R.R. Revenue - Per Car 60 Cents Basis, $16.34
Hoboken Manufacturer's R.R. Revenue - Per Car 66 Cents Basis, $17.97

NORTHBOUND
SUMMARY

TOTALS	CARS	WEIGHT
5% Commodities . .	55	2,219,981
10% Commodities . .	496	24,213,721
TOTALS	551	26,433,702

HOBOKEN MANUFACTURER'S REVENUE

TOTAL	CARS	WEIGHT	REVENUE	
5% Commodities . .	55	2,219,981	60 cents ton $ 666.00	63 cents ton $ 699.30
10% Commodities . .	496	24,213,721	60 cents ton $7,264.12	66 cents ton $7,990.05
TOTALS	551	26,433,702	$7,930.12	$8,689.35

Based upon above totals - Average weight per car pounds 47,974 tons - 24.0
Average revenue per car - 60 cents per ton - $14.39
" " " " 63 and 66 cents per ton - $15.77

REVISED EXHIBIT No. 38 WITNESS E.A. HODKINSON

HOBOKEN MANUFACTURER'S R.R. Vs. A.C.& Y.RY. ET AL

STATEMENT COVERING THE CARLOAD MOVEMENT VIA SEATRAIN LINES TO DESTINATIONS LESS THAN 100 MILES FROM NEW YORK,N.Y. DURING MAY-JULY-SEPTEMBER AND NOVEMBER, 1936 AND JANUARY AND MARCH 1937.

NORTHBOUND

SHIPMENTS NOT ENTITLED TO FREE LIGHTERAGE

COMMODITIES SUBJECT TO 5% INCREASE UNDER EX PARTE 123

Commodity	Origin	Destination	No. of Cars	Weight	Rate From Hoboken	Charges From Hoboken	Hoboken Man.R.R. Allowance
Cooperage Stock:							
Staves	Belle Chasse . La.	Bayonne. . . .N.J.	10	743,800	9	$ 669.42	$ 223.14
Staves	Bonita . . . . La.	Bayonne. . . .N.J.	3	197,700	9	177.93	59.31
Heading	Monroe . . . . La.	Bayonne. . . .N.J.	6	303,000	9	272.70	90.90
Staves	New Orleans. . La.	Bayonne. . . .N.J.	2	121,100	9	108.99	36.33
Staves	Winnsboro. . . La.	Bayonne. . . .N.J.	2	113,900	9	102.51	34.17
Heading	Monroe . . . . La.	Bayway . . . .N.J.	1	57,400	9	51.66	17.22
Gum Staves	Belle Chasse . La.	Edgewater. . .N.J.	1	69,600	9	62.64	20.88
Staves Wdn	Belle Chasse . La.	Edgewater. . .N.J.	1	70,000	9	63.00	21.00
Staves	Belle Chasse . La.	Edgewater. . .N.J.	2	147,300	9	132.56	44.19
Staves	Lake Providence . . . . La.	Edgewater. . .N.J.	2	146,400	9	131.76	43.92
Staves	Lake Providence . . . . La.	Edgewater. . .N.J.	9	634,600	9	571.14	190.38
Gum Heading	Plaquemine . . La.	Edgewater. . .N.J.	2	104,400	9	93.96	31.32
Staves	Sondheimer . . La.	Edgewater. . .N.J.	1	70,500	9	63.45	21.15
Staves	Sondheimer . . La.	Edgewater. . .N.J.	2	144,600	9	130.14	43.38
Staves	Friars Point.Miss.	Edgewater. . .N.J.	3	216,860	9	195.18	65.06
Coiled Elm Hoops & Head Liners	Bunkie . . . . La.	Jersey City. .N.J.	1	55,800	9	50.22	16.74
Staves	Ferriday . . . La.	Matawan. . . .N.J.	4	299,300	11	329.23	89.79
Staves	Lake Providence . . . . La.	Matawan. . . .N.J.	11	826,500	11	909.26	247.98
Staves	Sondheimer . . La.	Matawan. . . .N.J.	8	598,500	11	658.35	179.55
Staves	Friars Point.Miss.	Matawan. . . .N.J.	2	146,000	11	160.60	43.80
Staves	Alexandria . . La.	Maurer . . . .N.J.	2	142,000	10	142.00	42.60
Staves	Bonita . . . . La.	Maurer . . . .N.J.	1	74,500	10	74.50	22.35
Staves	Monroe . . . . La.	Maurer . . . .N.J.	2	160,000	10	160.00	48.00
Staves	Winnfield. . . La.	Maurer . . . .N.J.	2	140,500	10	140.50	42.15
Slack Cooperage Stock	New Orleans. . La.	Rahway . . . .N.J.	2	136,400	9	122.76	40.92
Staves	Ferriday . . . La.	Trenton. . . .N.J.	2	142,200	13	184.86	42.66
Staves	Lake Providence . . . . La.	Trenton. . . .N.J.	1	72,300	13	93.99	21.69
Staves	Sondheimer . . La.	Trenton. . . .N.J.	16	1,192,300	13	1,549.86	357.66
Gum & Ash Staves	Alexandria . . La.	B.E.D.T. Brooklyn. . .N.Y.	2	157,000	11	172.70	47.10
Staves	Belle Chasse . La.	B.E.D.T. Brooklyn . . .N.Y.	3	239,120	11	263.03	71.74
Staves	Grosse Tete. . La.	B.E.D.T. Brooklyn. . .N.Y.	5	412,300	11	453.53	123.69
Slack Bbls. Cooperage Stock	New Orleans. . La.	4th St. Brooklyn. . .N.Y.	4	236,200	11	259.82	70.86
Hides, Pelts or Skins:							
G. S. Hides	Belle Chasse . La.	No.Newark. . .N.J.	1	36,000	10	36.00	10.80
G. S. Hides	Ft.Worth . . .Tex.	No.Newark. . .N.J.	1	48,140	10	48.14	14.44
G. S. Hides	San Antonio. .Tex.	No.Newark. . .N.J.	1	48,800	10	48.80	14.64

COMMODITIES SUBJECT TO 10% INCREASE UNDER EX PARTE 123

Commodity	Origin	Destination	No. of Cars	Weight	Rate From Hoboken	Charges From Hoboken	Hoboken Man. R.R. Allowance
Salt:							
Salt	New Orleans. La.	Carteret. N.J.	1	50,000	6	$ 30.00	$ 15.00
Bags Salt	Havana Cuba	Clifton N.J.	2	95,000	7	66.50	28.50
Salt	Jefferson Island. La.	Dundee. N.J.	1	100,600	6	60.36	30.18
Salt	Havana Cuba	Dundee. N.J.	4	198,000	6	118.80	59.40
Salt	New Orleans. La.	Fairview. N.J.	3	146,400	7	102.48	43.92
Salt	Belle Chasse La.	Garfield. N.J.	2	200,750	6	120.45	60.23
Salt	Weehawken. N.J.	Hohokus N.J.	1	45,000	9	40.50	13.50
Salt	New Orleans. La.	Irvington N.J.	1	45,000	7	31.50	13.50
Salt	Jefferson Island. La.	Jersey City N.J.	3	300,000	5	150.00	90.00
Bulk Salt	Jefferson Island. La.	Newark. N.J.	2	200,000	7	140.00	60.00
Bags Salt	New Orleans. La.	Newark. N.J.	4	190,200	7	133.14	57.06
Bulk Salt	New Orleans. La.	Newark. N.J.	5	501,940	5	250.97	150.58
Salt	Seatrain Lines	New Brunswick N.J.	5	226,550	8	181.24	67.97
Salt	Weehawken. N.J.	No.Newark N.J.	7	350,000	7	245.00	105.00
Salt	Weehawken. N.J.	No.Newark N.J.	1	50,000	7	35.00	15.00
Bulk Salt	Belle Chasse La.	Paterson. N.J.	2	202,412	6	121.45	60.72
Salt Pack	Jefferson Island. La.	Paterson. N.J.	2	200,000	8	160.00	60.00
Salt Bulk	Jefferson Island. La.	Paterson. N.J.	13	1,300,000	6	780.00	390.00
Salt Bulk	New Orleans. La.	Paterson. N.J.	2	200,000	6	120.00	60.00
Salt Pack	Winnfield. La.	Paterson. N.J.	3	300,000	8	240.00	90.00
Salt Pack	Weehawken. N.J.	Paterson. N.J.	1	45,000	8	36.00	13.50
Salt Pack	Weehawken. N.J.	Patersbn. N.J.	1	50,000	8	40.00	15.00
Salt Pack	Weehawken. N.J.	Paterson. N.J.	2	90,000	8	72.00	27.00
Salt Bulk	Weehawken. N.J.	Paterson, N.J.	7	700,000	6	420.00	210.00
Salt Pack	Weehawken. N.J.	Paterson. N.J.	2	115,000	8	92.00	34.50
Salt	Weehawken. N.J.	Paterson. N.J.	6	331,000	8	264.80	99.30
Salt	New Orleans. La.	Perth Amboy N.J.	1	45,000	8	36.00	13.50
Salt	Weehawken. N.J.	Ridgewood N.J.	1	45,000	8	36.00	13.50
Salt	New Orleans. La.	Townley N.J.	3	300,600	6	180.36	90.18
Table Salt	New Orleans. La.	Trenton N.J.	3	170,130	10	170.14	51.04
Salt	New Orleans. La.	Union City. N.J.	1	100,300	6	60.18	30.09
Salt	Belle Chasse La.	Warner. N.J.	3	300,000	6	180.00	90.00
Table Salt	New Orleans. La.	Waverly N.J.	4	258,275	7	180.80	77.48
Bulk Salt	New Orleans. La.	Waverly N.J.	1	101,120	6	60.67	30.34
Bulk Salt	New Orleans. La.	West Newark N.J.	5	504,320	5	252.16	151.30
Salt	Belle Chasse La.	Mattewan. N.Y.	1	100,980	9	90.88	30.29
Shingles:							
Asphalt Shingles	Belle Chasse La.	No.Bergen N.J.	1	41,640	8	33.31	12.49
Sugar:							
Sugar	New Orleans. La.	Brooklyn East District Terminal N.Y.	1	83,200	12	91.52	24.96
Syrup:							
Molasses	White Castle La.	Long Island City. N.Y.	1	93,240	10	93.24	27.97
Molasses	White Castle La.	Long Island City. N.Y.	1	95,900	10	95.90	28.77
Molasses	Weehawken. N.J.	Long Island City. N.Y.	1	96.400	10	96.40	28.92
Wire:							
Copper Wire	Plaquemine La.	Laurel Hill L.I.-N.Y.	1	56,000	23	128.80	8.80
		TOTALS	526	34,112,951		$33,034.01	
		TONS		17,056			

Average Weight Per Car - Pounds 64,854 - Tons 32.4
Hoboken Manufacturer's R.R. Revenue - 60 Cents Per Ton, $10,233.89
Hoboken Manufacturer's R.R. Revenue - 66 Cents Per Ton, $11,257.27
Hoboken Manufacturer's R.R. Revenue - Per Car - 60 Cent Basis, $19.46
Hoboken Manufacturer's R.R. Revenue - Per Car - 66 Cent Basis, $21.44

Lumber or Veneer:								
Lumber	Tallulah . . . La.	Belleville . .N.J.	2	139,400	9	125.46	41.82
Cottonwood Lumber. . . .	Plaquemine . . La.	Bloomfield . .N.J.	1	69,600	9	62.64	20.88
Hardwood Lumber.	New Orleans. . La.	Boonton. . . .N.J.	1	48,860	11	53.75	14.66
Oak Flooring	Alexandria . . La.	Clifton. . . .N.J.	1	50,100	9	45.09	15.03
Lumber	Belle Chasse . La.	Clifton. . . .N.J.	1	53,400	9	48.06	16.02
Dressed Oak Flooring . .	Shreveport . . La.	Clifton. . . .N.J.	1	49,600	9	44.64	14.88
Lumber	Weehawken. . .N.J.	Clifton. . . .N.J.	1	50,700	9	45.63	15.21
Y.P. Lumber.	New Orleans. . La.	Harrison . . .N.J.	1	77,840	9	70.06	23.35
Hardwood Lumber.	New Orleans. . La.	Lenox. . . . .N.J.	2	117,700	9	105.93	35.31
Cottonwood Lbr	New Orleans. . La.	Newark . . . .N.J.	17	1,220,700	9	1,098.63	366.21
Cypress Lumber	Plaquemine . . La.	No.Hawthorne .N.J.	1	38,000	9	34.20	11.40
Cypress Lumber	Belle Chasse . La.	Paterson . . .N.J.	1	60,200	9	54.18	18.06
Y.P. Lumber.	Alco . . . . . La.	Perth Amboy. .N.J.	1	86,200	9	77.58	25.86
Y.P. Lumber.	Long Leaf. . . La.	Perth Amboy. .N.J.	2	149,720	9	134.75	44.92
Y.P. Lumber.	New Orleans. . La.	Perth Amboy. .N.J.	3	266,800	10	266.80	80.04
Cypress Lumber	Weehawken. . .N.J.	Pompton Lakes.N.J.	1	36,000	10	36.00	10.80
Lumber	Belle Chasse . La.	Red Bank . . .N.J.	1	58,300	12	69.96	17.49
Cypress Lumber	Plaquemine . . La.	Ridgewood. . .N.J.	1	50,500	10	50.50	15.15

Commodity	Origin	Destination	No. of Cars	Weight	Rate From Hoboken	Charges From Hoboken	Hoboken Man.R.R. Allowance
Lumber or Veneer:							
Lumber	Plaquemine . . La.	Rockaway. . . . . .N.J.	1	45,000	11	$ 49.50	$ 13.50
Hardwood, Lbr. not Dressed	Seatrain Lines . .	No.4th St.Brooklyn.N.Y.	1	49,500	13	64.35	14.65
Lumber	Belle Chasse . La.	B.E.D.T. Brooklyn .N.Y.	1	44,100	11	48.51	13.23
Rotary Cut Lumber.	Belle Chasse . La.	B.E.D.T. Brooklyn .N.Y.	1	71,800	11	78.98	21.54
Lumber	Belle Chasse . La.	B.E.D.T. Brooklyn .N.Y.	1	67,300	11	74.03	20.19
Lumber	De Ridder. . . La.	B.E.D.T. Brooklyn .N.Y.	1	67,000	11	73.70	20.10
Lumber	De Ridder. . . La.	B.E.D.T. Brooklyn .N.Y.	1	70,280	11	77.31	21.08
Lumber	Hammond. . . . La.	B.E.D.T. Brooklyn .N.Y.	1	72,800	11	80.08	21.84
Gum Lumber	Hammond. . . . La.	B.E.D.T. Brooklyn .N.Y.	1	68,300	11	75.13	20.49
Lumber	Hammond. . . . La.	B.E.D.T. Brooklyn .N.Y.	2	130,660	11	143.73	39.20
Dried, Lumber.	New Orleans . . La.	Bush Terminal . . .N.Y.	1	63,000	11	69.30	18.90
Cottonwood Lumber.	Plaquemine . . La.	B.E.D.T. Brooklyn .N.Y.	1	71,600	11	78.76	21.48
Lumber	Plaquemine . . La.	B.E.D.T. Brooklyn .N.Y.	2	146,500	11	161.15	43.95
Rotary Cut Lumber.	Ponchatoula. . La.	B.E.D.T. Brooklyn .N.Y.	1	77,180	11	84.89	23.15
Gum Lumber	Sorrento . . . La.	B.E.D.T. Brooklyn .N.Y.	2	120,600	11	132.66	36.18
Lumber	Sorrento . . . La.	B.E.D.T. Brooklyn .N.Y.	1	70,200	11	77.22	21.06
Lumber	Sorrento . . . La.	B.E.D.T. Brooklyn .N.Y.	1	74,600	11	82.06	22.38
Pine Box Material.	Crystal Springs . . Miss.	B.E.D.T. Brooklyn .N.Y.	1	73,000	11	80.30	21.90
Gum Lumber	Port Gibson. Miss.	B.E.D.T. Brooklyn .N.Y.	2	151,840	11	167.02	45.55
Lumber	Weehawken. . .N.J.	B.E.D.T. Brooklyn .N.Y.	1	73,000	11	80.30	21.90
Cypress Lumber	Plaquemine . . La.	Huntington. . L.I..N.Y.	1	54,000	16	86.40	16.20
Lumber	Plaquemine . . La.	Locust Valley . . .N.Y.	1	61,500	16	98.40	18.45
Cypress Lumber	Plaquemine . . La.	Sloatsburg. . . . .N.Y.	1	60,900	12	73.08	18.27
Lumber	Plaquemine . . La.	Tompkinsville . . .S.I.	1	58,200	12	69.84	17.46
Cypress Lumber	Plaquemine . . La.	Westhampton . . . .N.Y.	1	67,200	16	107.52	20.16
Oils:							
Cottonseed Oil Foots	Belle Chasse . La.	Babbitt . . . . . .N.J.	1	75,600	8	60.48	22.68
Cocoanut Oil	Belle Chasse . La.	Bayonne . . . . . .N.J.	5	303,700	9	273.33	91.11
Palm Oil	Gretna . . . . La.	Bayonne . . . . . .N.J.	10	602,700	9	542.43	180.81
Cottonseed Oil	Gretna . . . . La.	Edgewater . . . . .N.J.	7	420,000	9	378.00	126.00
Refined Palm Oil	New Orleans. . La.	Bayonne . . . . . .N.J.	5	300,560	9	270.50	90.17
Cottonseed Oil	Gretna . . . . La.	Edgewater . . . . .N.J.	2	120,000	9	108.00	36.00
Cottonseed Oil Foots	Belle Chasse . La.	Harrison. . . . . .N.J.	5	388,120	9	349.31	116.44
Soyabean Oil	Havana . . . .Cuba	Harrison. . . . . .N.J.	2	142,111	9	127.90	42.63
Cottonseed Oil	Gretna . . . . La.	Jersey City . . . .N.J.	11.	660,000	9	594.00	198.00
Cottonseed Oil	Gretna . . . . La.	Newark. . . . . .N.J.	1	60,000	9	54.00	18.00
Peanut Oil	Seatrain Lines . .	Bush Terminal . . .N.Y.	2	121,560	12	145.87	36.47
Cottonseed Oil	Dallas . . . .Tex.	(Bush Termina) Brooklyn . . . . .N.Y.	1	61,650	9½	58.57	18.50
Cotton Seed Oil or Soapstock	New Orleans. . La.	N.Y.Dock Brooklyn .N.Y.	1	60,500	12	72.60	18.15
Cottonseed Oil Foots	New Orleans. . La.	N.Y.Dock Brooklyn .N.Y.	3	181,020	10	181.02	54.31
Cottonseed Oil	Gretna . . . . La.	Elmhurst. . . . . .N.Y.	3	181,420	14	253.99	54.43
Palm Oil Foots	Gretna . . . . La.	36th Street . . . .N.Y.	1	72,720	10	72.72	21.82
Refined Cottonseed Oil	Dallas . . . .Tex.	New York Harbor . .N.Y. 45th and East River	1	61,900	12	74.28	18.57
Vegetables:							
Tomatoes	Havana . . . .Cuba	New Haven . . . . Conn.	1	23,625	31	73.24	7.09
Tomatoes	Havana . . . .Cuba	New Haven . . . . Conn.	1	24,975	38	94.90	7.49
Tomatoes	Havana . . . .Cuba	Duane St. . . . . .N.Y.	7	185,760	20	371.52	55.73
		TOTALS	256	16,886,721		$17,479.93	$5,066.01
		Tons	8,443				

Average Weight Per - Pounds 65,964 Tons - 33.0

Hoboken Manufacturer's R.R.Revenue	60 cents Per Ton	$5,066.01
Hoboken Manufacturer's R.R.Revenue	63 cents per Ton	$5,319.28
Hoboken Manufacturer's R.R.Revenue Per Car 60 Cent Basis		$ 19.79
Hoboken Manufacturer's R.R.Revenue Per Car 63 Cent Basis		$ 20.78

COMMODITIES SUBJECT TO 10% INCREASE UNDER EX PARTE 123

Commodity	Origin	Destination	No. of Cars	Weight	Rate From Hoboken	Charges From Hobcken	Hcboken Man. R.R. Allowance
Alcohol:							
Alcohol	Belle Chasse . La.	Newark. . . . . .N.J.	3	220,700	11	$ 242.77	$ 66.21
Alcohol	Harvey . . . . La.	Newark. . . . . .N.J.	11	621,000	11	683.10	186.30
Alcohol	New Orleans. . La.	Newark. . . . . .N.J.	2	109,200	11	120.12	32.76
Asphalt:							
Asphalt	Havana . . . .Cuba	Bogota. . . . . .N.J.	1	76,489	7	53.55	22.95
Crude Mineral Asphalt	Seatrain Lines . .	New Brunswick . . .N.J.	4	330,566	8	264.44	99.17
Mineral Asphalt	Havana . . . .Cuba	New Brunswick . . .N.J.	18	1,521,441	8	1,217.14	456.43
Solid Asphalt	Havana . . . .Cuba	New Market. . . . .N.J.	4	329,273	8	263.42	98.78
Asphalt	Thimble Rock .Utah	Bushwick Sta. . . .N.Y.	5	414,140	10	414.14	124.24
Bakery Goods:							
Bakery Goods	Belle Chasse . La.	Long Island City. .N.Y.	1	20,000	16	32.00	6.00
Barium:							
Barytes, not Precipitated	Havana . . . .Cuba	Waverly . . . . . .N.J.	3	377,473	7	264.23	113.24
Black, Carbon:							

Black, Carbon:								
Carbon Black	Belle Chasse . La.	Bridgeport	Conn.	1	40,940	20	81.88	12.28
Carbon Black	Belle Chasse . La.	Bridgeport	Conn.	1	51,150	20	102.31	15.35
Carbon Black	Borger . . . .Tex.	Bridgeport	Conn.	1	51,150	29	148.34	15.35
Carbon Black	Borger . . . .Tex.	Bridgeport	Conn.	1	31,200	29	90.48	9.36
Carbon Black	Belle Chasse . La.	W.Haven	Conn.	1	52,077	21	109.36	15.62
Carbon Black	Borger . . . .Tex.	W.Haven	Conn.	3	153,330	21	321.99	46.00
Carbon Black	Borger . . . .Tex.	W.Haven	Conn.	6	307,115	21	644.94	92.13
Carbon Black	Magic City . .Tex.	W.Haven	Conn.	1	51,400	21	107.94	15.42
Carbon Black	Swartz . . . . La.	Bayonne	N.J.	14	636,700	11	700.37	191.01
Carbon Black	Eliasville . .Tex.	Bayonne	N.J.	2	83,000	11	91.30	24.90
Carbon Black	Belle Chasse . La.	Butler	N.J.	2	81,390	20	162.78	24.42
Carbon Black	Belle Chasse . La.	Butler	N.J.	2	122,110	14	170.96	36.63
Carbon Black	Swartz . . . . La.	Dundee	N.J.	2	82,620	12	99.14	24.79
Carbon Black	Borger . . . .Tex.	Dundee	N.J.	1	41,950	12	50.34	12.59
Carbon Black	Borger . . . .Tex.	Dundee	N.J.	2	83,300	12	99.96	24.99
Carbon Black	Eliasville . .Tex.	Dundee	N.J.	2	104,740	12	125.69	31.42
Carbon Black	Belle Chasse . La.	East Rutherford	N.J.	1	41,950	12	50.35	12.59
Mineral Earth	Marshall . . .Tex.	Edgewater	N.J.	2	85,800	11	94.38	25.74
Carbon Black	Borger . . . .Tex.	Jersey City	N.J.	3	110,500	16	176.24	33.05
Carbon Black	Havana . . . .Cuba	Newark	N.J.	1	41,550	11	45.71	12.47
Carbon Black	New Orleans. . La.	Newark	N.J.	4	165,000	16	264.00	49.50
Carbon Gas Black	New Orleans. . La.	Newark	N.J.	8	334,200	11	367.62	100.26
Carbon Black	Lington. . . . La.	Passaic	N.J.	1	40,000	12	48.00	12.00
Carbon Black	Sterlington. . La.	Passaic	N.J.	6	247,800	12	297.36	74.34
Bags Carbon Black	Pampa. . . . .Tex.	Passiac	N.J.	2	104,300	12	125.16	31.29
Carbon Black	New Orleans. . La.	Trenton	N.J.	16	690,734	15½	1,070.64	207.22
Carbon Black	Borger . . . .Tex.	Trenton	N.J.	1	41,500	15½	64.33	12.45
Carbon Black	New Orleans. . La.	Bush Terminal	N.Y.	1	40,000	14	56.00	12.00
Board, Wall or Fibre:								
Masonite Fibreboard	Belle Chasse . La.	Bridgeport	Conn.	5	331,900	15	497.85	99.57
Masonite Fibreboard	Belle Chasse . La.	Middletown	Conn.	1	45,000	17	76.50	13.50
Wallboard	Marrero. . . . La.	New Haven	Conn.	1	40,000	15	60.00	12.00
Wallboard	Marrero. . . . La.	Dundee	N.J.	2	93,300	8	74.64	27.99
Fibreboard Wallboard	Havana . . . .Cuba	J.City,Grand St.	N.J.	2	95,720	8	76.58	28.72
Fibre Board	Marrero. . . . La.	Jersey City	N.J.	1	47,600	8	38.08	14.28
Fibreboard Wallboard	New Orleans. . La.	Grand St.,J.City.	N.J.	6	285,800	8	228.64	85.74
Pcs. Fibreboard	Belle Chasse . La.	Manville	N.J.	1	69,600	10	69.60	20.88
Fibreboard	New Orleans. . La.	Manville	N.J.	9	486,200	10	486.20	145.86
Fibre Board	Laurel . . . Miss.	Manville	N.J.	2	112,600	10	112.60	33.78
Fibreboard Wallboard	New Orleans. . La.	Metuchen	N.J.	17	921,810	9	829.63	276.54
Fibre Board	Belle Chasse . La.	Newark	N.J.	4	295,700	8	236.56	88.71
Fibre Board	Marrero. . . La.	Newark	N.J.	2	125,100	8	100.08	37.53
Masonite Fibreboard	Belle Chasse . La.	Paterson	N.J.	1	51,000	9	45.90	15.30
Fibre Wallboard	New Orleans. . La.	Port Newark	N.J.	8	484,300	8	387.44	145.29
Fibre Board	Marrero. . . . La.	Roselle	N.J.	1	45,200	8	36.16	13.56
Fibre Board	Marrero. . . . La.	Spring Lake	N.J.	1	60,100	12	72.12	18.03
Fibre Board	Belle Chasse . La.	Trenton	N.J.	8	507,500	12	609.00	152.25
Wall Board	Marrero. . . . La.	Newburg	N.Y.	1	56,400	12	67.68	16.92
Wallboard	Weehawken. . .N.J.	Newburgh	N.Y.	1	36,000	12	43.20	10.80
Masonite Fibreboard	Belle Chasse . La.	Bush Terminal Brooklyn	N.Y.	1	50,500	15	75.75	15.15
Fibreboard Wallboard	Marrero. . . . La.	Jamaica . . .L.I.	N.Y.	2	72,000	12	86.40	21.60
Wallboard	Marrero. . . . La.	Mineola . . .L.I.	N.Y.	1	45,740	13	59.46	13.72
Wallboard	Marrero. . . . La.	Tarrytown	N.Y.	1	58,540	11	64.39	17.56
Fibreboard Wallboard	New Orleans. . La.	Allentown	Pa.	2	72,000	14	100.80	21.60
Bones:								
Animal Charcoal	New Orleans. . La.	Edgewater	N.J.	6	300,600	9	270.54	90.18

COMMODITIES SUBJECT TO 10% INCREASE UNDER EX PARTE 123

Commodity	Origin	Destination	No. of Cars	Weight	Rate From Hoboken	Charges From Hoboken	Hoboken Man. R.R. Allowance
Copper, Brass or Bronze:							
Scrap Copper	Baton Rouge. La.	Carteret. N.J.	1	50,200	9	$ 45.18	$ 15.06
Scrap Copper	Belle Chasse La.	Carteret. N.J.	1	80,000	9	72.00	24.00
Scrap Brass.	Monroe La.	Carteret. N.J.	2	118,800	9	106.92	35.64
Scrap Copper	Shreveport La.	Carteret. N.J.	2	101,000	9	90.90	30.30
Scrap Copper	Ft.Worth Tex.	Carteret. N.J.	1	79,800	9	71.82	23.94
Scrap Copper	Dallas Tex.	Carteret. N.J.	2	161,500	9	145.35	48.45
Scrap Copper	Long View. Tex.	Carteret. N.J.	2	140,900	9	126.81	42.27
Scrap Copper	Waco Tex.	Carteret. N.J.	1	52,980	9	47.68	15.89
Scrap Copper	Willow Springs Tex.	Carteret. N.J.	1	49,500	9	44.55	14.85
Scrap Brass and Copper	New Orleans. La.	Perth Amboy N.J.	2	96,940	9	87.24	29.08
Scrap Metals	New Orleans. La.	Perth Amboy N.J.	1	41,000	9	36.90	12.30
Scrap Copper	Ft.Worth Tex.	Perth Amboy N.J.	2	148,000	9	133.20	44.40
Scrap Copper	Lubeck Tex.	Perth Amboy N.J.	1	50,100	9	45.09	15.03
Scrap Copper	Belle Chasse La.	Tottenville S.I.-N.Y.	7	454,400	11	499.84	136.32
Scrap Lead Cable, etc.	Dallas Tex.	Tottenville S.I.-N.Y.	4	311,100	11	342.21	93.33
Electrical Appliances:							
Storage Batteries.	Belle Chasse La.	Orange. N.J.	1	18,708	17	31.80	5.61
Fruit, Fresh:							
Pineapples	Havana Cuba	Bound Brook N.J.	2	58,000	27	156.60	17.40
Furniture Stock:							
Furniture Stock in the Whites.	New Orleans. La.	Brooklyn East District Terminal N.Y.	4	149,200	14	208.88	44.76
Glycerine:							
Crude Glycerine.	Havana Cuba	Jersey City N.J.	9	972,047	11	1,069.25	291.61
Glycerine.	Havana Cuba	Port Ivory. S.I.	7	687,800	15	1,031.70	206.44
Iron or Steel:							
Iron Angle Beams and Wood Timbers.	New Orleans. La.	Greenville. N.J.	1	44,120	9	39.71	13.24
Lime Sludge:							
Lime Sludge.	Seatrain Lines	Perth Amboy N.J.	1	79,800	9	71.82	23.94
Limestone Sludge:							
Limestone Sludge	New Orleans. La.	So.Kearney. N.J.	1	80,000	9	72.00	24.00
Machinery and Machines:							
2nd Hand Printing Mchy	Havana Cuba	Newark. N.J.	1	24,000	11	26.40	7.20
Road Building Machine.	New Orleans. La.	South Amboy N.J.	1	24,000	13	31.20	7.20
Paper, Wrapping:							
Wrapping Paper	New Orleans. La.	Bush Terminal N.Y.	1	53,698	11	59.07	16.11
Petroleum:							
Gasoline	No.Baton Rouge.La.	Bayonne N.J.	3	188,400	10	188.40	56.52

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Paper, Wrapping:							
Wrapping Paper	New Orleans. La.	Bush Terminal .N.Y.	1	53,698	11	59.07	16.11
Petroleum:							
Gasoline	No.Baton Rouge.La.	Bayonne .N.J.	3	188,400	10	188.40	56.52
Gasoline	Baytown. .Tex.	Bayonne .N.J.	4	268,300	10	268.30	80.49
Gasoline	No.Baton Rouge.La.	Bayway. .N.J.	5	267,400	11	294.14	80.22
Lub. Oil	Smackover. .Ark.	Carteret. .N.J.	2	92,700	11	101.97	27.81
Lub. Oil	Belle Chasse . La.	Carteret. .N.J.	1	45,100	11	49.61	13.53
Lub. Oil	Barnsdall. . Okla.	Carteret. .N.J.	1	67,600	11	74.36	20.28
Lub. Oil	Okmulgee . . Okla.	Carteret. .N.J.	1	67,100	11	73.81	20.13
Napthta.	Wichita Falls.Tex.	Carteret. .N.J.	27	1,888,400	11	2,077.24	566.52
Lub. Oil	New Orleans. . La.	Newark. .N.J.	3	198,824	10	198.82	59.65
Lub. Oil	Ponca City . Okla.	Newark. .N.J.	3	199,600	10	199.60	59.88
Lub. Oil	Tulsa. . . . Okla.	Newark. .N.J.	44	2,922,700	10	2,922.70	876.81
Pet. Lub. Grease	Belle Chasse . La.	Blissville. . L.I.-N.Y.	3	162,149	15	243.22	48.64
Pet. Lub. Grease	Belle Chasse . La.	Blissville. . L.I.-N.Y.	2	79,925	15	110.89	23.98
Pet. Lub. Grease	Weehawken. . .N.J.	Blissville. . L.I.-N.Y.	1	54,632	15	81.95	16.39
Pet. Lub. Oil	Ponca City . Okla.	Yonkers .N.Y.	2	134,343	14	188.09	40.30
Rags:							
Rags	Havana . . .Cuba	Jay St. Terminal. .N.Y.	2	91,630	11	100.80	27.49
Salt:							
Salt	Belle Chasse . La.	Bayway. .N.J.	1	100,800	6	60.48	30.24
Salt	New Orleans. . La.	Bayway. .N.J.	2	200,500	6	120.30	60.15
Salt	Belle Chasse . La.	Belleville. .N.J.	8	800,000	6	480.00	240.00
Salt	Belle Chasse . La.	Bloomfield. .N.J.	2	202,000	6	121.20	60.60
Salt	New Orleans. . La.	Bound Brook .N.J.	1	45,000	9	40.50	13.50
Salt	Weehawken. . .N.J.	Butler. .N.J.	1	50,000	9	45.00	15.00
Salt	Weehawken. . .N.J.	Butler. .N.J.	1	50,000	9	45.00	15.00
Salt	New Orleans. . La.	Carlton Hill. .N.J.	3	135,000	7	94.50	40.50
Salt	New Orleans. . La.	Carteret. .N.J.	4	320,300	6	192.18	96.09

STATEMENT COVERING THE CARLOAD MOVEMENT VIA SEATRAIN LINES TO DESTINATIONS LESS THAN 100 MILES FROM NEW YORK,N.Y. DURING MAY-JULY-SEPTEMBER AND NOVEMBER, 1936 AND JANUARY AND MARCH 1937.

NORTHBOUND

SHIPMENTS ENTITLED TO FREE LIGHTERAGE

COMMODITIES SUBJECT TO 10% INCREASE UNDER EX PARTE 123

Commodity	Origin	Destination	No. of Cars	Weight	Rate from Hoboken	Charges from Hoboken	Hoboken Man.R.R. Allowance
Fibre Sisal.	New Orleans . .La.	Bridesburg . . .Pa.	3	126,443	15.5	$ 196.00	$ 85.35
Salt, Table.	New Orleans . .La.	So.Camden. . . .N.J.	1	50,360	.13	65.47	34.00
		TOTAL.	4	176,803		$ 261.47	$ 119.35

Tons 88
Average Weight 44,351 Pounds 22.0 Tons

Hoboken Manufacturers Revenue $1.35 Per Ton $119.35
Hoboken Manufacturers Revenue 66 Cents Per Ton $58.34
Hoboken Manufacturers Revenue Per Car $1.35 Basis $29.84
Hoboken Manufacturers Revenue 66 Cent Basis $14.58

NORTH BOUND

SUMMARY

	CARS	WEIGHT
5% Commodities . . .	256	16,886,721
10% Commodities . . .	530	34,289,754
TOTAL	786	51,176,475

HOBOKEN MANUFACTURERS REVENUE

	CARS	WEIGHT	REVENUE			
5% Commodities . . .	256	16,886,721	60 cents Ton	$ 5,066.02	63 cents Ton	$ 5,319.32
10% Commodities . . .	530	34,289,754	60 cents Ton	$10,286.93	66 cents Ton	$11,315.62
				$15,352.95		$16,634.94
TOTAL	786	51,176,475				

Based upon above Totals Average Weight Per Car 65,110 Pounds 32.6 Tons

Average Revenue Per Car 60 cents Per Ton $19.26
Average Revenue Per Car 63 and 66 cents Per Ton $21.16

WITNESS E.A.HODKINSON

REVISED EXHIBIT No. 39 WITNESS E.A. HODKINSON

Received in evidence

HOBOKEN MANUFACTURER'S R.R. Vs. A.C.& Y.RY., ET AL

STATEMENT COVERING THE CARLOAD MOVEMENT VIA SEATRAIN LINES TO ORIGINS 100 MILES OR OVER FROM NEW YORK,N.Y., DURING MAY, JULY, SEPTEMBER AND NOVEMBER, 1936, AND JANUARY AND MARCH, 1937

SOUTHBOUND

SHIPMENTS ENTITLED TO FREE LIGHTERAGE

COMMODITIES SUBJECT TO 5% INCREASE UNDER EX PARTE 123

Commodity	Origin	Destination	No. of Cars	Weight	Commodity	Origin	Destination	No. of Cars	Weight
ur:					Grain Products:				
lour.	Buffalo . . .N.Y.	Havana. . . .Cuba	24	2,205,680	Bags Malt.	Montreal. . .Que.	Havana. . . .Cuba	2	264,000
lour.	Buffalo Lake.N.Y.	Havana. . . .Cuba	25	1,939,220	Malt	Montreal. . .Que.	Havana. . . .Cuba	1	66,000
lour.	Buffalo Lake.N.Y.	Sagua . . . .Cuba	1	88,200	Malt	Toronto,Ont., Canada	Havana. . . .Cuba	8	444,000
lour.	E.Buffalo . .N.Y.	Havana. . . .Cuba	5	488,160	Brewers Grits. . . .	Roby. . . . .Ind.	Havana. . . .Cuba	1	70,525
lour.	Marion. . . .Ohio	Havana. . . .Cuba	1	100,000	Wheat.	Buffalo . . .N.Y.	Havana. . . .Cuba	1	60,000
it, Fresh:					Hay:				
pples	Chambersburg. Pa.	Havana. . . .Cuba	2	64,000	Baled Hay.	Atlanta . . .N.Y.	Havana. . . .Cuba	1	25,140
pples	Quincy. . . . Pa.	Havana. . . .Cuba	4	128,000	Bales Hay.	Horseheads. .N.Y.	Havana. . . .Cuba	1	24,760
resh Apples . . .	Winchester. . Va.	Havana. . . .Cuba	1	32,000					
pples	Waynesboro. . Pa.	Havana. . . .Cuba	2	70,400					
pples	Martinsburg . Pa.	Havana. . . .Cuba	2	64,000	Lumber:				
pples	Tablers . . W.Va.	Havana. . . .Cuba	1	34,080	Lumber	Ste.Agathe. .P.Q.	Havana. . . .Cuba	1	51,800
					Hard Maple Lbr . . .	Cass. . . . W.Va.	Havana. . . .Cuba	1	52,800
in Products:									
alt	Montreal. . .Que.	Havana. . . .Cuba	1	38,740	Vegetables:				
alt	Montreal. . .Que.	Havana. . . .Cuba	1	27,260	Bags Peas & Beans. .	Cambridge . .N.Y.	San Antonio.Texas	1	36,000
alt	Montreal. . .Que.	Havana. . . .Cuba	4	274,000	Beans.	Palmyra . . .N.Y.	New Orleans. .La.	2	100,750

TOTAL CARS: 94

Weight - Pounds 6,749,515 - Tons 3,375
Average Weight Per Car - Pounds 71,803 - Tons 35.9

Hoboken Manufacturer's R.R. Revenue $1.35 Per Ton $4,555.92
Hoboken Manufacturer's R.R. Revenue 60 Cents Per Ton $2,024.85
Hoboken Manufacturer's R.R. Revenue 63 Cents per Ton $2,126.10
Hoboken Manufacturer's R.R. Revenue - Per Car $1.35 Basis $48.47
Hoboken Manufacturer's R.R. Revenue - Per Car 60 Cents Basis $21.54
Hoboken Manufacturer's R.R. Revenue - Per Car 63 Cents Basis $22.62

COMMODITIES SUBJECT TO 10% INCREASE UNDER EX PARTE 123

Commodity	Origin	Destination	No. of Cars	Weight	Commodity	Origin	Destination	No. of Cars	Weight
d:					Agricultural Implements:				
ulphuric Acid . . .	Marcus Hook . Pa.	Juarez. . .Mexico	1	30,000	Reapers.	Auburn. . . .N.Y.	New Orleans. .La.	2	53,139
mmonia & Muriatic Acid.	Marcus Hook .. Pa.	Tampico . .Mexico	1	30,400	Eusilage Cutter. . .	Shortsville .N.Y.	Dallas . . . Tex.	1	24,453
icultural Imple- nts:					Agric. implements. .	Syracuse. . .N.Y.	New Orleans. .La.	2	48,500
gl. Implements. . .	Auburn. . . .N.Y.	New Orleans . La.	1	31,998	Agric. Implements. .	Syracuse. . .N.Y.	Dallas . . . Tex.	1	41,676

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COMMODITIES SUBJECT TO 10% INCREASE UNDER EX PARTE 123

Commodity	Origin	Destination	No. of Cars	Weight
Aluminum:				
Aluminum Sheets. . .	Toronto . . .Ont.	Havana. . . .Cuba	1	56,490
Shells (Ammunition).	Kings Mills .Ohio	Weehawken . .N.J.	1	43,552
Asbestos:				
Roofing Paper. . . .	York. . . . . Pa.	Jersey City .N.J.	6	262,474
Bldg. Paper.	York. . . . . Pa.	Jersey City .N.J.	1	42,871
Bags:				
Paper Bags	Hudson Falls.N.Y.	New Orleans . La.	2	81,715
Paper Bags	Hudson Falls.N.Y.	New Orleans . La.	2	48,325
Paper Bags	Tabor . . . . Pa.	Hoboken . . .N.J.	1	36,000
Blocks:				
Last Blocks.	Ellicotville.N.Y.	Havana. . . .Cuba	1	48,700
Boards:				
Wallboard.	Lockport. . .N.Y.	Shreveport. . La.	1	40,000
Wallboard.	Lockport. . .N.Y.	Beaumont. . .Tex.	2	91,629
Wallboard.	Lockport. . .N.Y.	Houston . . .Tex.	1	65,978
Boiler Parts:				
Boiler Tubes	Allenport . . Pa.	Havana. . . .Cuba	1	46,430
Bottles:				
Paper.	Fulton. . . .N.Y.	Dallas. . . .Tex.	1	10,000
Brushes:				
Fibre Brushes. . . .	Frederick . . Md.	New Orleans . La.	1	30,037
Calcium:				
Carbide of Calcium .	Shawinigan Falls. . . .Que.	Havana. . . .Cuba	19	1,415,100
Candy or Confectionery:				
Confectionery. . . .	Hershey . . . Pa.	New Orleans . La.	1	36,033
Confectionery. . . .	Hershey . . . Pa.	Abeline . . .Tex.	1	37,366
Confectionery. . . .	Hershey . . . Pa.	El Paso . . .Tex.	4	149,022
Confectionery. . . .	Hershey . . . Pa.	Sherman . . .Tex.	1	38,746
Confectionery. . . .	Hershey . . . Pa.	Waco. . . . .Tex.	1	36,847
Caps, Covers and Tops:				
Can Ends Nested, in paper	Canonsburg. . Pa.	New Orleans . La.	22	1,791,693
Can Ends Nested, in paper	Canonsburg. . Pa.	New Orleans . La.	14	1,169,165
Carbon Articles:				
Carbon Furnace Electrodes.	Niagara Falls. . . .N.Y.	Houston . . .Tex.	2	100,985
Electrodes	Suspension Bridge . . .N.Y.	New Orleans . La.	1	39,675
Casein:				
Grd. Casein.	Bainbridge. .N.Y.	New Orleans . La.	1	30,300
Cement:				
Cement	Navarro . . . Pa.	Sweetwater. .Tex.	1	50,164
Cement	Nazareth. . . Pa.	Hoboken . . .N.J.	1	76,000
Chains:				
Iron Chains in Kegs.	East York . . Pa.	Jersey City .N.J.	1	40,000
Iron Chains.	East York . . Pa.	New Orleans . La.	1	40,000
Clay:				
Ground Clay.	Emeryville. .N.Y.	Houston . . .Tex.	1	60,000
Tile:				
Tile Clay or Earthenware	Zanesville. .N.Y.	Havana. . . .Cuba	4	159,755
Containers:				
Iron Pails	Rochester . .N.Y.	Havana. . . .Cuba	3	95,202
Iron Pails (Nested).	Rochester .N.Y.	Havana. . . .Cuba	1	34,270
Cyanamid:				
Cyanamid	Niagara Falls. . . .Ont.	Havana. . . .Cuba	3	302,100
Electric Appliances:				
Transformer.	Pittsfield. Mass.	El Paso . . .Tex.	1	52,500
Electric Fans & Fan Parts	Fulton. . . .N.Y.	New Orleans . La.	2	68,392
Aluminum Cable . . .	Massena . . .N.Y.	New Orleans . La.	2	100,431
Storage Batteries. .	Niagara Falls. . . .N.Y.	New Orleans . La.	4	134,402
Electric Generator, K.D	Schenectady .N.Y.	Alexandria. . La.	1	30,000
Transformers	Sharon. . . . Pa.	Jersey City .N.J.	1	35,965
Elevating Truck Platforms	Rutland . . . Vt.	New Orleans . La.	2	57,200
Fruit, Canned:				
Canned Fruit & Vegetables.	Medina. . . .N.Y.	Dallas. . . .Tex.	2	82,803
Furniture:				
Filing Cabinets.	Grand Rapids . . Mich.	Dallas. . . .Tex.	1	26,315
Wood Filing Cabinets.	Youngstown. .Ohio	Havana. . . .Cuba	1	18,000
Steel Filing Cases .	Corry . . . . Pa.	Havana. . . .Cuba	1	26,097
Gases, compressed:				
Chlorine Liquid Comp. Gas	Niagara Falls. . . .N.Y.	Havana. . . .Cuba	1	71,509
Chloride Liquified .	Niagara Falls. . . .N.Y.	Havana. . . .Cuba	1	32,749

COMMODITIES SUBJECT TO 10% INCREASE UNDER EX PARTE 123

Commodity	Origin	Destination	No. of Cars	Weight
Glass:				
Plate Glass	Toledo, Ohio	Houston, Tex.	1	54,580
Plate Glass	Toledo, Ohio	Houston, Tex.	1	52,600
Plate Glass	Toledo, Ohio	Houston, Tex.	3	164,140
Plate Glass	Toledo, Ohio	Houston, Tex.	1	61,080
Plate Glass	Toledo, Ohio	Houston, Tex.	1	91,870
Plate Glass	Toledo, Ohio	Houston, Tex.	1	61,960
Rough rolled glass, not bent	Floreffe, Pa.	Houston, Tex.	7	336,459
Plate Glass, not bent, not exceeding 120 inches	Floreffe, Pa.	New Orleans, La.	1	50,610
Plate Glass, not bent, not exceeding 120 U/I	Ford City, Pa.	New Orleans, La.	2	103,080
Window Glass, not bent	New Kensington, Pa.	Havana, Cuba	1	47,508
Glassware:				
Quart Bottles	Elmira, N.Y.	New Orleans, La.	1	42,669
Glassware	Lancaster, Ohio	Havana, Cuba	1	25,000
Glassware	So. Columbus, Ohio	Havana, Cuba	8	262,100
Glass Tumblers	Toledo, Ohio	Houston, Tex.	1	31,400
Grindstones:				
Grindstones	Berea, Ohio	Lagua La Grande, Cuba	1	37,216
Heaters:				
Water Heaters	Cleveland, Ohio	New Orleans, La.	1	32,203
Steel Water Heater Skid	Philadelphia, Pa.	Jersey City, N.J.	1	43,700
Iron and Steel:				
Sheet Steel Galv	Cambridge, Ohio	Hoboken, N.J.	7	432,913
Galv. Steel Ware	Terminal Jct. Ohio	New Orleans, La.	6	196,298
Galv. Steel Articles	Terminal Jct. Ohio	New Orleans, La.	10	237,658
Galv. Steel Sheets	Apollo, Pa.	Havana, Cuba	4	338,621
Galv. Steel Sheets	Apollo, Pa.	New Orleans, La.	6	349,440
Steel Structural Plates	Berwick, Pa.	Marshall, Tex.	2	37,000
Beams, Angles and Channel	Bethlehem, Pa.	Marshall, Tex.	1	71,280
Steel Billets & Rough Steel Forgings	Burnham, Pa.	Marshall, Tex.	1	40,000
Bar Steel	Carnegie, Pa.	Jersey City, N.J.	2	125,111
Bar Steel	Carnegie, Pa.	New Orleans, La.	8	487,776
Bar Steel	Economy, Pa.	New Orleans, La.	1	52,707
Steel Boiler Tubes	Elwood City, Pa.	New Orleans, La.	2	121,000
Sheet Steel	Farrell, Pa.	Monterey, Mex.	4	258,952
Sheet Steel	Farrell, Pa.	Laredo, Tex.	2	134,418
Iron and Steel Material	Greenville, Pa.	Weehawken, N.J.	1	40,399
Steel Plates	Harrisburg, Pa.	El Paso, Tex.	4	345,920
Steel Plates	Homestead, Pa.	Hoboken, N.J.	1	69,680
Steel Beams	Homestead, Pa.	Havana, Cuba	2	99,550
Steel Bars	Junction City, Pa.	Dallas, Tex.	1	40,000
Steel Sheets	Junction City, Pa.	Dallas, Tex.	1	59,000
Steel Rods	Lebanon, Pa.	Hoboken, N.J.	2	97,400
Iron and Steel:				
Iron Mass	Philadelphia, Pa.	Hoboken, N.J.	5	385,580
Galv. Iron Pipes	Philadelphia, Pa.	New Orleans, La.	1	31,160
Galv. Sheet Steel	Vandergrift, Pa.	Havana, Cuba	4	207,819
Steel Wire Rope	Wilkes-Barre, Pa.	Houston, Tex.	3	176,130
Lead:				
Dry White Lead	Scranton, Pa.	New Orleans, La.	3	125,826
Liquors, Alcoholic:				
Alcoholic Liquors	Schenley, Pa.	New Orleans, La.	9	383,487
Machinery:				
Booster Engine Beds	Woodbine, Md.	New Orleans, La.	1	43,240
Textile Machinery	Barre Plains, Mass.	Potosi, Mex.	1	24,000
Paper Mill Machinery	Pittsfield, Mass.	Crossett, Ark.	1	26,700
Refrigerator Cooling Machines	Detroit, Mich.	Havana, Cuba	2	60,552
Machinery	Buffalo, N.Y.	New Orleans, La.	1	25,086
Internal Comb. Engines	Buffalo, N.Y.	San Juanito, Mex.	2	97,624
Int. Comb. Engine (Part Skidded)	East Buffalo, N.Y.	New Orleans, La.	1	27,900
Textile Machinery	Herkimer, N.Y.	Havana, Cuba	1	24,000
Machinery, Paper Mill	Hoosick Falls, N.Y.	Weehawken, N.J.	4	142,432
Machinery	Hoosick Falls, N.Y.	Havana, Cuba	3	110,883
Voting Machines	Jamestown, N.Y.	Dallas, Tex.	4	128,144
Engine & Parts	Olean, N.Y.	No. Baton Rouge, La.	1	24,000
Internal Comb. Engine & Parts	Olean, N.Y.	Kilgore, Tex.	4	185,100
Int. Comb. Engine & Parts	Olean, N.Y.	Overton, Tex.	1	31,250
Machinery	Painted Post, N.Y.	Laredo, Tex.	6	231,008
Machinery	Painted Post, N.Y.	Texas City, Tex.	1	33,905
Machinery	Painted Post, N.Y.	Bermejillo, Mex.	1	29,862
Paper Machinery	Watertown, N.Y.	Crossett, Ark.	7	424,900
Boilers, K.D	Barberton, Ohio	Weehawken, N.J.	1	39,360
Boilers, K.D	Barberton, Ohio	Weehawken, N.J.	1	36,700
Machinery	Hamilton, Ohio	Havana, Cuba	1	24,000
Machinery	Birdsboro, Pa.	Marrero, La.	1	90,100
Air Coolers & parts combined	Bridgeport, Pa.	Dallas, Tex.	1	38,294
Power Trip Hammers	Chambersburg, Pa.	Houston, Tex.	2	131,700
Machinery	Chambersburg, Pa.	Houston, Tex.	2	76,300
Service Sta. Equipment	Conshohocken, Pa.	Houston, Tex.	1	39,264
Second Hand Textile Machinery	Philadelphia, Pa.	Jersey City, N.J.	1	64,600
Machinery	Philadelphia, Pa.	Laredo, Tex.	8	207,800
Textile Machinery & Parts	Williamsport, Pa.	Jersey City, N.J.	3	72,700
Machinery & Parts	York, Pa.	Jersey City, N.J.	3	93,000
Second Hand Machy.	Mt. Morris, N.Y.	New Orleans, La.	1	38,300

Commodity	Origin	Destination	No. of Cars	Weight
ts:				
Felt Base, Rugs & Linoleum	Marcus Hook . Pa.	Jersey City .N.J.	3	127,881
ils & Spikes:				
Steel Wire Nails & Plain Steel Wire	Donora. . . . Pa.	Havana. . . .Cuba	1	60,894
Spikes & Bolts	Lebanon . . . Pa.	Havana. . . .Cuba	1	45,000
Oil Well Supplies	Oil City. . . Pa.	Jersey City .N.J.	3	104,865
ints, Paint Material nd Putty:				
Titanium Barium & Calcium Pigment	Edgemoor. . .Del.	New Orleans . La.	2	80,520
Lithopone	Newport . . .Del.	Jersey City .N.J.	6	332,010
Titanium Barium Base Pigment	Newport . . .Del.	Jersey City .N.J.	7	374,722
Putty	Detroit . . Mich.	Houston . . .Tex.	1	41,900
Lithopone Zinc Oxide	Aquashicola . Pa.	New Orleans . La.	3	141,800
Lithophone Zinc Oxide	Aquashicola . Pa.	San Antonio .Tex.	1	50,200
Lithophone Zinc Oxide	Palmerton . . Pa.	Houston . . .Tex.	4	172,200
White Lead in Oil	Scranton. . . Pa.	New Orleans . La.	1	49,020
White Lead	Scranton. . . Pa.	New Orleans . La.	3	129,520
per, newsprint:				
Newsprint	Dalhousie . .N.B.	Beaumont. . .Tex.	1	53,340
Newsprint	Pt.Alfred . .P.Q.	New Orleans . La.	1	40,968
Newsprint	Gatineau. . .Que.	San Antonio .Tex.	2	115,459
Newsprint	Gatineau. . .Que.	New Orleans . La.	5	239,399
Newsprint	Grand Mere. .Que.	New Orleans . La.	3	169,300
Newsprint	Grand Mere. .Que.	Sherman . . .Tex.	1	40,127
Newsprint	Grand Mere. .Que.	Tyler . . . .Tex.	1	54,781
Newsprint	Jonquiere . .Que.	Shreveport. . La.	4	450,945
Newsprint	Livermore Falls. . . . Me.	New Orleans . La.	6	231,741
Newsprint	Corinth . . .N.Y.	New Orleans . La.	1	49,222
Newspri	Corinth . . .N.Y.	Carpenter . .Tex.	1	54,971
Newsprint Paper, not less than 60% Ground Wood	Corinth . . .N.Y.	Ft.Worth. . .Tex.	1	41,003
Newsprint	Glen Falls. .N.Y.	Havana. . . .Cuba	1	40,334
Newsprint	Glen Falls. .N.Y.	New Orleans . La.	1	61,347
per Printing:				
Printing Paper	Luke. . . . . Md.	New Orleans . La.	2	113,016
Printing Paper	Ticonderoga .N.Y.	Dallas. . . .Tex.	1	41,028
per:				
Toilet Paper	Albany. . . .N.Y.	Weehawken . .N.J.	1	32,675
Toilet Paper	Fulton. . . .N.Y.	New Orleans . La.	2	60,199
Toilet Paper	Little Falls.N.Y.	New Orleans . La.	2	82,377
Toilet Paper	Lyons Falls .N.Y.	New Orleans . La.	11	467,891
Paper,Towels & Toilet	Ondawa. . . .N.Y.	New Orleans . La.	1	24,155
Paper:				
Toilet Paper & Towels	Green Bay . .Wis.	Havana. . . .Cuba	2	61,480
Paper:				
Wrapping	Carthage. . .N.Y.	New Orleans . La.	3	163,208
Wall Paper	Cortland. . .N.Y.	Houston . . .Tex.	7	296,200
Unsaturated Roofing Paper	Hudson Falls.N.Y.	New Orleans . La.	4	191,785
Roofing Paper in rolls	Hudson Falls.N.Y.	Goodyear. . Miss.	1	38,520
Pulp Board	Oswego. . . .N.Y.	Marrero . . . La.	4	193,956
Wrapping	Oswego. . . .N.Y.	New Orleans . La.	3	187,160
Petroleum:				
Pet Oil Lub.	Petrolia. . . Pa.	Hoboken . . .N.J.	1	53,420
Pet.Lub. Oil	Philadelphia. Pa.	Havana. . . .Cuba	1	47,905
Pet.Lub.Grease & Oil	Pittsburgh. . Pa.	Jersey City .N.J.	2	60,082
Pet.Lub. Oil	Pittsburgh. . Pa.	Havana. . . .Cuba	2	58,854
Plumbers' Goods:				
W.C. Bowl Tanks, Lavatories	Ford City ... Pa.	New Orleans . La.	1	40,295
W.C. Bowl Tanks, Lavatories	Uniontown . . Pa.	Jersey City .N.J.	1	33,479
W.C. Bowl Tanks, Lavatories	Sheboygan . .Wis.	Havana. . . .Cuba	1	46,974
Pipe:				
Wrot. Steel Pipe	Sparrows Pt . Md.	Havana. . . .Cuba	4	306,200
Pipe Coil & Parts	Framingham. Mass.	Marrero . . . La.	1	37,220
Iron Pipe	Cohoes. . . .N.Y.	New Orleans . La.	2	118,760
Wrot. Pipe	So.Lorain . .Ohio	Shreveport. . La.	1	74,300
Wrought Pipe & Fittings	Struthers . .Ohio	Weehawken . .N.J.	4	200,774
Wrot. Iron Pipe	Aliquippa . . Pa.	Havana. . . .Cuba	1	57,210
Wrot. Conduit Pipe	Economy . . . Pa.	New Orleans . La.	1	65,014
Wrot. Iron Pipe	McKeesport. . Pa.	Havana. . . .Cuba	1	112,900
Wrot. Conduit Pipe	New Kensington. . . . . Pa.	Jersey City .N.J.	1	44,032
Wrot. Iron Conduit	Sharpsburg. . Pa.	New Orleans . La.	1	47,300
Stove Pipe & Elbows	Wheeling. . W.Va.	New Orleans . La.	1	37,174
Conduit Pipe	Moundsville.W.Va.	New Orleans . La.	9	340,605
Pottery:				
Earthenware	New Castle. . Pa.	Jersey City .N.J.	1	24,000
Railway Car or Locomotive Parts:				
Loco Fuel Boxes	Lima. . . . .Ohio	Havana. . . .Cuba	1	36,000
Locomotive Axels & Steel Billets	Burnham . . . Pa.	Marshall. . .Tex.	3	174,003
Ry. Car Wheels	Butler. . . . Pa.	Havana. . . .Cuba	1	45,000
Locomotive Tires	Latrobe . . . Pa.	New Orleans . La.	3	198,901
Locomotive Tires	Latrobe . . . Pa.	Havana. . . .Cuba	1	45,000

Commodity	Origin	Destination	No. of Cars	Weight
nforcement:				
teel Wire Mesh. . .	Donora. . . . Pa.	New Orleans . La.	1	40,193
teel Wire Mesh reinforced.	Donora. . . . Pa.	El Paso . . .Tex.	1	40,000
fing:				
sbestos & Asphalt oated Roofing. . .	Economy . . . Pa.	New Orleans . La.	1	45,157
ep. Roofing. . . .	Philadelphia. Pa.	Hoboken . . .N.J.	1	65,252
t:				
teel Bar Sash . . .	Youngstown. .Ohio	New Orleans . La.	1	37,200
les:				
tales	Rutland . . . Vt.	New Orleans . La.	1	25,793
et Steel Ware:				
heet Iron	Middletown. .Ohio	Havana. . . .Cuba	1	46,526
teel Sheets	Youngstown. .Ohio	Hoboken . . .N.J.	21	1,286,840
teel Sheets	Bridgeville . Pa.	Jersey City .N.J.	1	41,801
heet Steel.	Vandergrift . Pa.	Havana. . . .Cuba	8	511,668
heet Steel.	Vandergrift . Pa.	New Orleans . La.	2	121,714
te:				
oofing Slate. . . .	Granville . .N.Y.	New Orleans . La.	1	78,400
oofing Slate. . . .	Bangor. . . . Pa.	New Orleans . La.	1	58,000
oofing Slate. . . .	No.Bangor . . Pa.	Dallas. . . . .Tex.	1	44,500
late Slabs.	Pen Argyle. . Pa.	New Orleans . La.	1	36,000
late Slabs.	Pen Argyle. . Pa.	Weehawken . .N.J.	1	60,300
oofing Slate. . . .	Pen Argyle. . Pa.	New Orleans . La.	2	147,000
late Slabs.	Pen Argyle. . Pa.	San Antonio .Tex.	1	60,425
late Blackboards. .	Welshtown . . Pa.	Houston . . .Tex.	1	30,000
estone or Talc:				
alc	Madoc . . . .Ont.	Houston . . .Tex.	2	80,200
alc	Emeryville. .N.Y.	Houston . . .Tex.	1	60,000
alc	Hailesboro. .N.Y.	Havana. . . .Cuba	1	62,400
alc	Hailesboro. .N.Y.	New Orleans . La.	3	180,000
alc	Hailesboro. .N.Y.	Houston . . .Tex.	1	60,000
m (Soda):				
carb. Soda	Syracuse. . .N.Y.	Nashville . .Ark.	1	38,575
carb. Soda	Syracuse. . .N.Y.	Texarkana . .Ark.	2	118,876
carb. Soda	Syracuse. . .N.Y.	Alexandria. . La.	1	44,522
carb. Soda	Syracuse. . .N.Y.	Shreveport. . La.	1	41,251
carb. Soda	Syracuse. . .N.Y.	Abilene . . .Tex.	1	50,920
da Ash-Bicarbonate f Soda	Painesville .Ohio	New Orleans . La.	3	259,325
rbonate of Soda esqui.	Painesville .Ohio	Weehawken . .N.J.	1	45,201
da Ash	Painesville .Ohio	Dallas. . . .Tex.	1	54,128
da Ash	Painesville .Ohio	Ft.Worth. . .Tex.	3	184,654
ustic Soda-Soda sh	Painesville ,Ohio	San Antonio .Tex.	2	130,580
rbonate of Soda. .	Painesville .Ohio	San Antonio .Tex.	1	61,436
licate of Soda,T/C	Chester . . . Pa.	Hoboken . . .N.J.	3	152,400
les:				
aples.	Struthers . . Pa.	Weehawken . .N.J.	5	266,220

Commodity	Origin	Destination	No. of Cars	Weight
Stone Cast or Natural:				
Marble	Center Rutland. . . Vt.	New Orleans . La.	2	179,340
Marble	Proctor . . . Vt.	Waco. . . . .Tex.	1	44,100
Marble	Swanton . . . Vt.	Dallas. . . .Tex.	1	41,900
Stoves & Ranges:				
Gas Stoves	Mt.Clare. . . Md.	Hoboken . . .N.J.	1	26,225
Gas Stoves & Repair Parts	Middletown. . Pa.	Seatrain Lines. .	1	29,980
Gas Stoves & Repair Parts	Middletown. . Pa.	New Orleans . La.	3	86,275
Gas Stoves	Wilkinsburg . Pa.	Havana. . . .Cuba	1	26,982
Gas Stoves	Wilkinsburg . Pa.	New Orleans . La.	1	33,150
Tile:				
Rfg. Tile Clay . . .	New Lexington. . . . .Ohio	Havana. . . .Cuba	1	57,546
Tin Plate:				
Tinplate	Gary. . . . .Ind.	Havana. . . .Cuba	1	83,208
Steel and Tin Plates	Sparrows Pt . Md.	Havana. . . .Cuba	17	1,321,122
Tin Plate.	Steubenville.Ohio	New Orleans . La.	2	179,003
Tinplate	Steubenville.Ohio	Havana. . . .Cuba	3	180,847
Tin Plate.	Warren. . . .Ohio	Havana. . . .Cuba	1	71,680
Tin Plate.	Yorkville . .Ohio	New Orleans . La.	2	194,283
Plain Tinplate . . .	Cannonsburg . Pa.	New Orleans . La.	34	3,149,024
Tin Plate.	Farrell . . . Pa.	Havana. . . .Cuba	3	212,166
Tin Plate.	Monessen. . . Pa.	Havana. . . .Cuba	7	520,458
Tin Plate.	New Castle. . Pa.	Havana. . . .Cuba	5	342,589
Tin Plate.	Weirton . . W.Va.	Jersey City .N.J.	21	1,684,535
Vegetables, Canned:				
Canned Tomato Juice	Fulton. . . .Del.	New Orleans . La.	1	39,850
Tomato Juice (Cans).	Houston . . .Del.	Havana. . . .Cuba	1	40,925
Canned Goods	Biglerville . Pa.	Hoboken . . .N.J.	2	94,600
Canned Goods	Pittsburgh. . Pa.	Jersey City .N.J.	1	40,065
Vehicles, Children's:				
Childrens Vehicles, Toys, etc	Cleveland . .Ohio	Havana. . . .Cuba	1	19,817
Trucks	Lansing . . Mich.	Havana. . . .Cuba	1	18,000
Vehicle Parts:				
Auto Parts	Detroit . . Mich.	Havana. . . .Cuba	1	33,043
Auto Parts	Detroit . . Mich.	Havana. . . .Cuba	7	372,487
Tires and Tubes. . .	Akron . . . .Ohio	Havana. . . .Cuba	1	29,627
Couplings.	Lebanon . . . Pa.	Hoboken . . .N.J.	2	96,825
Welding Bars:				
Steel Welding Rods, flux coated	Schenectady .N.Y.	New Orleans . La.	1	36,000
Windmills:				
Windmill Material. .	Kendallville.Ind.	Havana. . . .Cuba	1	32,650

COMMODITIES SUBJECT TO 10% INCREASE UNDER EX PARTE 123

Commodity	Origin	Destination	No. of Cars	Weight	Commodity	Origin	Destination	No. of Cars	Weight
Wire:					Wire Cloth:				
Tinned Wires	Cleveland . .Ohio	Havana. . . .Cuba	1	47,655	Steel Wire Cloth less than ½" mesh .	East York . . Pa.	Jersey City .N.J.	1	31,568
Barbed Wire.	Struthers . .Ohio	Hoboken . . .N.J.	14	547,875	Steel Wire Cloth less than ½" inch .	Mt.Wolf . . . Pa.	Jersey City .N.J.	6	237,200
Wire Cloth:					Steel Wire Cloth . .	York. . . . . Pa.	Jersey City .N.J.	1	41,341
Iron Wire Cloth. . .	Cortland. . .N.Y.	Dallas. . . .Tex.	1	36,050					
Wire Cloth	Rome. . . . .N.Y.	New Orleans . La.	1	34,600					

TOTAL CARS: 713

Weight - Pounds 39,530,725 - Tons - 19,765
Average Weight Per Car - Pounds 55,443 - Tons - 27.7

Hoboken Manufacturers R.R. Revenue $1.35 Per Ton $26,683.24
Hoboken Manufacturers R.R. Revenue 60 Cents per Ton $11,859.22
Hoboken Manufacturers R.R. Revenue 66 Cents per Ton $13,045.14
Hoboken Manufacturers R.R. Revenue Per Car $1.35 Basis $37.42
Hoboken Manufacturers R.R. Revenue Per Car 60 Cent Basis $16.63
Hoboken Manufacturers R.R. Revenue Per Car 66 Cent Basis $18.30

STATEMENT COVERING THE CARLOAD MOVEMENT VIA SEATRAIN LINES FROM ORIGINS 100 MILES OR OVER FROM NEW YORK,N.Y., DURING MAY, JULY, SEPTEMBER AND NOVEMBER, 1936, AND JANUARY AND MARCH,1937

SOUTHBOUND

SHIPMENTS NOT ENTITLED TO FREE LIGHTERAGE

COMMODITIES SUBJECT TO 5% INCREASE UNDER EX PARTE 123

Commodity	Origin	Destination	No. of Cars	Weight
Fruit, Fresh:				
Cranberries.	Rocks. . . .Mass.	New Orleans. .La.	1	25,500
Cranberries.	Rocks. . . .Mass.	Shreveport . .La.	1	25,500
Cranberries.	Wareham. . .Mass.	New Orleans. .La.	1	24,000
Cranberries.	Wareham. . .Mass.	Shreveport . .La.	1	24,080
Lard:				
Lard	Detroit. . .Mich.	Havana . . . Cuba	1	59,400
Lard:				
Lard	Buffalo . . .N.Y.	Havana . . . Cuba	8	394,554
Lard	Buffalo . . .N.Y.	Havana . . . Cuba	10	602,240
Oils:				
Cocoanut Oil	Canton. . . . Md.	Havana . . . Cuba	2	121,420
Cocoanut Oil	Canton. . . . Md.	Hoboken. . . N.J.	2	123,740
Refined Peanut Oil . .	Wilmington. .N.C.	Havana . . . Cuba	3	179,950

TOTAL CARS: 30

Weight - Pounds 1,580,384 Tons 790

Average Weight Per Car - Pounds 52,679 Tons 26.3

Hoboken Manufacturer's R.R. Revenue 60 Cents Per Ton $474.12

Hoboken Manufacturer's R.R. Revenue 63 Cents Per Ton $497.82

Hoboken Manufacturer's R.R. Revenue - Per Car 60 Cents Basis $15.80

Hoboken Manufacturer's R.R. Revenue - Per Car 63 Cents Basis $16.59

COMMODITIES SUBJECT TO 10% INCREASE UNDER EX PARTE 123

Commodity	Origin	Destination	No. of Cars	Weight
Acids:				
Acetone.	Curtis Bay . .Md.	New Orleans . La.	3	164,235
Muriatic Acid.	Everttport .Mass.	Havana. . . .Cuba	1	75,100
Muriatic Acid.	Marcus Hook. .Pa.	Havana. . . .Cuba	5	280,600
Cresylic Acid.	Philadelphia .Pa.	Jersey City .N.J.	3	196,300
Athletic Goods:				
Roller Skates.	Torrington .Conn.	Weehawken . .N.J.	1	30,178
Bags:				
Paper.	Gilman . . . .Vt.	Dallas. . . .Tex.	2	110,183
Paper.	Gilman . . . .Vt.	Hovey . . . .Tex.	1	48,737
Boards:				
Plasterboard	Oakfield . . N.Y.	Sweetwater. .Tex.	5	245,334
Boxes, Black:				
Animal Charcoal. . . .	Philadelphia .Pa.	Gardenas. . .Cuba	1	50,660
Bone Charred Filtering Animal Charcoal,O.T.S.	Philadelphia .Pa.	Hoboken . . .N.J.	1	50,660
Boots or Shoes:				
Shoes.	Boston. . . Mass.	San Antonio .Tex.	3	120,000
Bottles:				
Glass Bottles. . . .	Bridgeton . .N.J.	Hoboken . . .N.J.	16	626,725
Brick:				
Fire Brick	Blandburg . . Pa.	Havana. . . .Cuba	1	23,700
Fire Brick	Blue Ball . . Pa.	New Orleans . La.	1	69,600
Brooms:				
Palm and Bassive . .	Hartford. . Conn.	Weehawken . .N.J.	1	24,375
Brushes:				
Brushes.	Hartford. . Conn.	Weehawken . .N.J.	1	31,073
Carpets,Carpeting:				
Carpet Paper Felt. .	E.Walpole . Mass.	Texarkana . .Tex.	3	108,301
Carpet Paper Felt. .	E.Walpole . Mass.	Shreveport. . La.	1	44,654

COMMODITIES SUBJECT TO 10% INCREASE UNDER EX PARTE 123

Commodity	Origin	Destination	No. of Cars	Weight
Cement:				
White Cement	York . . . . .Pa.	Seatrain Lines. .	16	1,477,222
Copper, Brass or Bronze:				
Brass-Copper Tubes . .	Waterbury. .Conn.	New Orleans. .La.	1	30,000
Electrical Appliances:				
Electric Appliances. .	New Britain.Conn.	Eagle Pass . Tex.	1	30,000
Fence Material:				
Wire Fencing	Georgetown .Conn.	Shreveport . .La.	2	70,000
Fire Fighting Apparatus:				
Fire Apparatus	Elmira . . . N.Y.	Dallas . . . Tex.	1	12,000
Freezers, Ice Cream. . .	Nashua . . . N.H.	Little Rock. Ark.	1	20,770
Furniture:				
Wooden Furniture . . .	Beecher Falls.Vt.	New Orleans. .La.	1	12,000
Gases, Compressed:				
Anhydrous Ammonia. . .	Niagara FallsN.Y.	Havana . . . Cuba	1	11,867
Glass:				
Plate Glass over 120 inches.	Toledo . . . Ohio	Houston. . . Tex.	3	155,680
Plate Glass Not Bent, Not exceeding 7½ x 15 feet	Ford City. . .Pa.	New Orleans. .La.	2	86,010
Glassware:				
Glass Bottles.	Fairmont . .W.Va.	Hoboken. . . N.J.	67	2,888,379
Hardware:				
Hardware, Hinges, Bolts, etc	New Britain.Conn.	Dallas . . . Tex.	1	46,704
Household Goods:	Eastport . . .Me.	Denison. . . Tex.	1	12,000
Iron or Steel:				
Rough Iron Castings. .	Boston. . . .Mass.	Weehawken. . N.J.	1	56,684
Iron Castings.	Boston . . .Mass.	Marshall . . Tex.	2	96,883
Iron Rollers	Woonsocket . R.I.	Crossett . . Ark.	1	30,000
Limestone:				
Ground Limestone . . .	Canaan . . .Conn.	Weehawken. . N.J.	5	300,000
Lumber:				
Boxboard	Montville. .Conn.	Havana . . . Cuba	3	131,905
Asbestos Lumber. . . .	Nashua . . . N.H.	New Orleans. .La.	1	36,250
Machinery:				
Engines and Parts. . .	E.Hartford .Conn.	Barksdale Field . . . .La.	1	38,880
Machinery:				
Metal Working Machinery	Hartford . .Conn.	Houston . . .Tex.	1	24,000
Cooling and Freezing Apparatus	New Britain.Conn.	Eagle Pass. .Tex.	1	18,000
Cooling and Freezing Apparatus..	New Britain,Conn.	Ft.Worth. . .Tex.	1	20,000
Power Grinding Machine	Stratford. .Conn.	Crossett. . .Ark.	1	24,000
Machinery.	Rumford. . . .Me.	Laredo. . . .Tex.	5	158,500
Machinery.	No.Adams . .Mass.	Ft.Worth. . .Tex.	1	34,030
Machinery,N.C.I.B.N. .	Lynn . . . .Mass.	New Orleans . La.	1	24,000
Machinery.	Whitings . .Mass.	Weehawken . .N.J.	9	369,380
Pulp Machines.	Nashua . . . N.H.	Crossett. . .Ark.	1	36,300
Motor Fuel:				
Motor Fuel -Anti Knock Compound. . . .	Wilmington . Del.	Hoboken . . . .N.J.	1	81,404
Motor Fuel - Anti-Knock Compound. . . .	Wilmington . Del.	Houston . . .Tex.	1	40,804
Motor Fuel - Anti-Knock Compound. . . .	Carneys PointN.J.	New Orleans.. La.	4	321,268
Motor Fuel - Anti-Knock Compound. . . .	Carneys PointN.J.	Shreveport. . La.	1	80,457
Motor Fuel - Anti-Knock Compound. . . .	Carneys PointN.J.	Hoboken . . .N.J.	27	1,814,100
Motor Fuel - Anti-Knock Compound. . . .	Carneys PointN.J.	Baytown . . .Tex.	1	80,421
Anti-Knock Compound. .	Carneys PointN.J.	Chasion . . .Tex.	1	80,047
Anti-Knock Compound. .	Carneys PointN.J.	Colorado. . .Tex.	1	40,317
Anti-Knock Compound. .	Carneys PointN.J.	Ft.Worth. . .Tex.	1	81,717
Anti-Knock Compound. .	Carneys PointN.J.	Gates . . . .Tex.	1	80,062
Anti-Knock Compound. .	Carneys PointN.J.	Hodge . . . .Tex.	1	40,351
Anti-Knock Compound. .	Carneys PointN.J.	Houston . . .Tex.	3	120,700
Anti-Knock Compound. .	Carneys PointN.J.	North Baton Rouge. . . .Tex.	7	604,500
Anti-Knock Compound. .	Carneys PointN.J.	Smith Bluff .Tex.	1	80,785
Anti-Knock Compound. .	Carneys PointN.J.	West Port Arthur . . .Tex.	10	525,600
Oils:				
Fish Oil T/C.	Wyandotte. .Mich.	Oakland . . .Cal.	1	61,100
Fish Oil	Wyandotte. .Mich.	Isabelite Oriente Province, Cuba	3	179,800
Fish Oil	Wyandotte. .Mich.	San FranciscoCal.	2	121,400
Linseed Oil.	Amsterdam. . N.Y.	Beaumont. . .Tex.	1	76,980
Refined Linseed Oil, .	Philadelphia. Pa.	New Orleans . La.	1	58,778
Paper, Printing:				
Printing Paper	Bangor . . . .Me.	Little Rock .Ark.	1	67,653
Printing.	Bangor . . . .Me.	Shreveport. . La.	1	65,044
Printing	Portland . . .Me.	Ft.Worth. . .Tex.	2	88,750
Printing	Lincoln. . . .Me.	Alexandria. . Va.	1	57,601
Printing	Lincoln. . . .Me.	Shreveport. . La.	1	56,867
Printing	Lincoln. . . .Me.	Ft.Worth. . .Tex.	1	61,984
Printing	South Brewer .Me.	Little Rock .Ark.	2	89,987
Printing	South Brewer .Me.	Shreveport. . La.	1	66,382

COMMODITIES SUBJECT TO 10% INCREASE UNDER EX PARTE 123

Commodity	Origin	Destination	No. of Cars	Weight
r:				
ilet	Hinsdale. . .N.H.	New Orleans. .La.	2	43,675
ilet	Northumber-land . . .N.H.	Shreveport . .La.	1	26,800
ilet	Northumber-land . . .N.H.	San Antonio . . Tex.	1	26,880
ilet	Northumber-land . . .N.H.	Tyler. . . . Tex.	1	26,880
r:				
issue	Baldwinsville . . . . Mass.	Havana . . . Cuba	11	435,701
tery:				
hinaware	Syracuse. . .N.Y.	Belle Chasse .La.	1	25,500
hinaware	Syracuse. . .N.Y.	New Orleans. .La.	3	95,220
hinaware	Syracuse. . .N.Y.	Shreveport . .La.	2	60,700
hinaware	Syracuse. . .N.Y.	San Antonio. Tex.	1	28,840
namelware	Grafton . . W.Va.	Hoboken. . . N.J.	1	33,100
ls:				
ron Rolls Boxed	Ansonia . . Conn.	Weehawken. . N.J.	4	188,340
les:				
rack Scales	St.Johnsbury .Vt.	Waco . . . Tex.	1	24,714
Slate:				
Crushed Slate	Whiteford. . .Md.	Jersey City .N.J.	3	240,100
Crushed Slate	Whiteford. . .Md.	Jersey City .N.J.	1	80,000
Crushed Slate	Granville. . N.Y.	New Orleans . La.	3	261,400
Crushed Slate	Granville. . N.Y.	Port Neches .Tex.	1	82,200
Crushed Slate	Slate Hill . .Pa.	Jersey City .N.J.	32	3,494,400
Slate Dust	Slate Hill . .Pa.	Jersey City .N.J.	13	1,418,200
Crushed Slate	Poultney . . .Vt.	Marrero . . . La.	6	500,400
Stone, Cast or Natural:				
Granite	Barre. . . . .Vt.	Weehawken . .N.J.	1	58,300
Stoves or Ranges:				
Cooking Stoves	Gardner. . .Mass.	Dallas. . . .Tex.	1	20,063
Toasters, electric	New Britain.Conn.	Laredo. . . .Tex.	1	30,541
Wire:				
Copper Wire, Lead Covered and Insulated	Worcester, .Mass.	Houston . . .Tex.	2	69,724

TOTAL CARS: 355

Weight - Pounds 20,948,596 Tons 10,474
Average Weight Per Car - Pounds 59,010 Tons 29.5

Hoboken Manufacturer's R.R. Revenue 60 Cents Per Ton $6,284.58
Hoboken Manufacturer's R.R. Revenue 66 Cents Per Ton $6,913.04
Hoboken Manufacturer's R.R. Revenue - Per Car 60 Cents Basis $15.89
Hoboken Manufacturer's R.R. Revenue - Per Car 66 Cents Basis $19.47

SOUTHBOUND

SUMMARY

TOTAL	CARS	WEIGHT
5% Commodities	124	8,329,899
10% Commodities	1,068	60,479,321
TOTALS	1,192	68,809,220

HOBOKEN MANUFACTURERS REVENUE

TOTAL	CARS	WEIGHT	REVENUE	
5% Commodities	124	8,329,899	60 cents ton $ 2,498,97	63 cents ton $ 2,623,92
10% Commodities	1,068	60,479,321	60 cents ton $18,143.80	66 cents ton $19,958.18
TOTALS	1,192	68,809,220	$20,642.77	$22,582.10

Based upon above totals - Average Weight Per Car - Pounds 57,726 - Tons 289 - $17.32
Average Revenue Per Car - 60 cents per ton - $17.32
Average Revenue Per Car - 63 & 66 cents per ton $18.94.

PRO. NO.1101

668-638a

WITNESS E.A.HODKINSON

REVISED EXHIBIT No. 40 WITNESS E.A. HODKINSON

HOBOKEN MANUFACTURER'S R.R. Vs. A.C.& RY. ET AL

STATEMENT COVERING THE CARLOAD MOVEMENT VIA SEATRAIN LINES FROM ORIGINS LESS THAN 100 MILES FROM NEW YORK,N.Y., DURING MAY, JULY, SEPTEMBER AND NOVEMBER,1936, AND JANUARY AND MARCH, 1937

SOUTHBOUND

SHIPMENTS NOT ENTITLED TO FREE LIGHTERAGE

COMMODITIES SUBJECT TO 5% INCREASE UNDER EX PARTE 123

Commodity	Origin	Destination	No. of Cars	Weight	Rate to Hoboken	Charges to Hoboken	Hoboken Man.R.R. Allowance
Oils:							
Soya Bean Oil.	Edgewater. . .N.J.	Havana . . . .Cuba	13	942,360	9	$ 848.12	$ 282.71
Soya Bean Oil.	Weehawken. . .N.J.	New Orleans. . La.	1	78,000	9	70.20	23.40
Edible Cocoanut Oil. . .	Corona . . . .N.Y.	Weehawken. . .N.J.	1	60,040	14	84.06	18.00
Cocoanut Oil	Pt.Ivory,S.I. N.Y.	Hoboken. . . .N.J.	3	180,000	13	234.00	54.00
Palm Oil	Pt.Ivory,S.I.,N.Y.	Hoboken. . . .N.J.	5	301,400	13	391.82	90.42
		TOTAL	23	1,561,800		$1,628.20	$468.53

	Tons.	781
Average Weight Per Car	Pounds 67,904 Tons. . . .	34.0
Hoboken Manufacturers R.R. Revenue	60 cents per Ton.	$468.53
Hoboken Manufacturers R.R. Revenue	63 cents per Ton.	491.97
Hoboken Manufacturers R.R. Revenue	Per Car 60 cents Basis. .	20.37
Hoboken Manufacturers R.R. Revenue	Per Car 63 cents Basis. .	21.39

COMMODITIES SUBJECT TO 10% INCREASE UNDER EX PARTE 123

Commodity	Origin	Destination	No. of Cars	Weight	Rate to Hoboken	Charges to Hoboken	Hoboken Man.R.R. Allowance
Acid:							
Sulphuric Acid	Edgewater. . .N.J.	Havana . . . .Cuba	9	860,820	10	$ 860.82	$ 258.25
Muriatic Acid.	Grasselli. . .N.J.	Hoboken. . . .N.J.	11	671,190	10	671.19	201.36
Sulphuric Acid.	Grasselli. . .N.J.	Hoboken. . . .N.J.	15	1,392,400	10	1,392.40	417.72
Hydrochloric Acid. . . .	Phillipsburg .N.J.	Juarez . . . .Mex.	1	38,000	18	68.40	11.40
Ammonia.	Seaboard . . .N.J.	Weehawken. . .N.J.	4	408,000	7	285.60	122.40
Ammunition:							
Small Arms Ammunition. .	Bridgeport . Conn.	Weehawken. . .N.J.	5	224,484	19	426.52	67.32
Asbestos:							
Asbestos Roofing	So.Boundbrook.N.J.	Havana . . . .Cuba	10	457,800	14	640.92	137.34
Bakery Goods:							
Biscuits,Cakes	Long Island City. . . . .N.Y.	Weehawken. . .N.J.	13	293,905	16	470.25	88.20
Bakery Goods	33rd St. . . .N.Y.	New Orleans. . La.	2	41,693	14	58.37	12.48
Bakery Goods	33rd St. . . .N.Y.	Havana . . . .Cuba	3	62,122	14	86.97	18.60
Carriers,Shipping:							
Empty Cylinders.	Easton . . . . Pa.	New Orleans. . La.	1	72,740	19	138.21	21.82
Carpets or Carpeting:							
Carpets.	Freehold . . .N.J.	Laredo . . . .Tex.	1	39,405	36	141.86	11.82
Chemicals:							
Letrachle.	Carteret . . .N.J.	New Orleans. . La.	1	36,643	15	54.96	10.99
Electric Appliances:							

Commodity	Origin	Destination	No. of Cars	Weight	Rate to Hoboken	Charges to Hoboken	Hoboken Man.R.R. Allowance
Acid:							
Sulphuric Acid	Edgewater. . .N.J.	Havana . . . .Cuba	9	860,820	10	$ 860.82	$ 258.25
Muriatic Acid.	Grasselli. . .N.J.	Hoboken. . . .N.J.	11	671,190	10	671.19	201.36
Sulphuric Acid.	Grasselli. . .N.J.	Hoboken. . . .N.J.	15	1,392,400	10	1,392.40	417.72
Hydrochloric Acid.	Phillipsburg .N.J.	Juarez . . . .Mex.	1	38,000	18	68,40	11.40
Ammonia.	Seaboard . . .N.J.	Weehawken. . .N.J.	4	408,000	7	285.60	122,40
Ammunition:							
Small Arms Ammunition.	Bridgeport . Conn.	Weehawken. . .N.J.	5	224,484	19	426.52	67.32
Asbestos:							
Asbestos Roofing	So.Boundbrook.N.J.	Havana . . . .Cuba	10	457,800	14	640.92	137.34
Bakery Goods:							
Biscuits,Cakes	Long Island City. . . .N.Y.	Weehawken. . .N.J.	13	293,905	16	470.25	88.20
Bakery Goods	33rd St. . . .N.Y.	New Orleans. . La.	2	41,693	14	58.37	12.48
Bakery Goods	33rd St. . . .N.Y.	Havana . . . .Cuba	3	62,122	14	86.97	18.60
Carriers,Shipping:							
Empty Cylinders.	Easton . . . .Pa.	New Orleans. . La.	1	72,740	19	138.21	21.82
Carpets or Carpeting:							
Carpets.	Freehold . . .N.J.	Laredo . . . .Tex.	1	39,405	36	141.86	11.82
Chemicals:							
Letrachle.	Carteret . . .N.J.	New Orleans. . La.	1	36,643	15	54.96	10.99
Electric Appliances:							
Loose Storage Batteries:	Seaboard . . .N.J.	Dallas . . . .Tex.	26	829,140	12	994.97	248.74
Electrical Switchboard	Waverly. . . .N.J.	Seatrain Lines . .	1	30,000	12	36.00	9.00
Explosives:							
Blasting Caps.	Pompton Lakes.N.J.	Naucalpan. . .Mex.	1	31,245	28	87.49	9.37
Fertilizer:							
Fertilizer	Carteret . . .N.J.	Hoboken... . .N.J.	2	201,200	8	160.96	60.36
Fertilizer	Warners. . . .N.J.	New Orleans. . La.	1	101,200	8	80.96	30.36
Fertilizer	Warners. . . .N.J.	Havana . . . .Cuba	4	403,000	8	322.40	120.90
Furniture Filing Cabinets	Bayway . . . .N.J.	Havana . . . .Cuba	4	76,800	17	130.56	23.04

590

COMMODITIES SUBJECT TO 10% INCREASE UNDER EX PARTE 123

Commodity	Origin	Destination	No. of Cars	Weight	Rate to Hoboken	Charges to Hoboken	Hoboken Man.R.R. Allowance
Gas or Petroleum Machinery:							
Distillery Cylinder. . .	Greenville . .N.J.	Texas City . .Tex.	1	117,300	11	129.03	35.19
Petroleum Distillery Cylinders.	Greenville . .N.J.	Texas City . .Tex.	1	130,000	11	143.00	39.00
Petroleum Distilling Cylinders	Jersey City. .N.J.	Texas City . .Tex.	3	231,140	11	254.25	69.34
Petroleum Distilling Cylinders	Greenville . .N.J.	Houston. . . .Tex.	5	206,300	11	226.93	61.89
Petroleum Distilling Cylinders	Greenville . .N.J.	Atreco . . . .Tex.	2	155,420	11	170,96	46.63
Petroleum Distilling Cylinders	Greenville . .N.J.	Baytown. . . .Tex.	1	41,480	11	45.63	12.44
Insecticides:							
Cal Arsenate	Bound Brook. .N.J.	Shreveport . . La.	2	68,900	12	82.68	20.67
Insulating Material:							
Unsaturated Roofing Felt	Little Ferry .N.J.	New Orleans. . La.	26	1,161,250	8	929.00	348.38
Unsaturated Roofing Felt	Little Ferry .N.J.	Port Neches. .Tex.	62	2,613,752	8	2,091,00	784.13
Asbestos Cement & Insulating Material	Manville . . .N.J.	New Orleans. . La.	5	179,371	14	251.15	53.82
Insulating Material. . .	Manville . . .N.J.	New Orleans. . La.	1	32.283	14	45.20	9.68
Steel Pipe:							
Steel Pipe	Bayway . . . .N.J.	No.Baton Route.La.	1	56,775	6	34.07	17.03
Iron Pipe Fittings . . .	Jersey City. .N.J.	Hoboken. . . .N.J.	1	55,740	6.5	36.23	16.72
Rough Iron Castings. . .	Newark . . . .N.J.	Tyler. . . . .Tex.	1	40,000	8	32.00	12.00
Lumber:							
Boxboard	Whippany . . .N.J.	Seatrain Line . .	1	57,200	10	57,20	17.16
Machinery:							
Used Machinery	Bloomfield . .N.J.	Weehawken . .N.J.	1	26,880	12	32.26	8.06
Machinery.	Carteret. . .N.J.	Texas City. . Tex.	3	74,300	12	89.16	22.29
Machinery.	Harrison . . .N.J.	Hoboken Mfrs.R.R .	1	33,760	12	40.51	10.13
Refgrs. Machinery. . . .	Harrison . . .N.J.	Hoboken. . . .N.J.	5	172,940	12	207.53	51.88
Elevators.	Harrison . . .N.J.	New Orleans. . La.	1	38,836	12	46.60	11.65
Elevator Equipment . . .	Harrison . . .N.J.	New Orleans. . La.	1	24,000	12	28.80	7.20
Machinery.	Irvington. . .N.J.	New Orleans. . La.	2	129,680	12	155.62	38.90
Metal Working Machines .	Irvington. . .N.J.	New Orleans. . La.	1	76,380	12	91.66	22.91
Iron Steam Condensers. .	Jersey City. .N.J.	Atreco . . . .Tex.	1	61,900	11	68.09	18.57
Iron Condenser	Jersey City. .N.J.	No.Baton Rouge.La.	1	24,000	11	26.40	7.20
Iron Steam Condensers, N.O.I.B.N	Jersey City. .N.J.	Baytown. . . .Tex.	2	95,720	11	105.29	28.72
Iron Machinery,N.O.I.B.N	Jersey City. .N.J.	Baytown. . . .Tex.	1	48,000	11	53.90	14.70
Iron Steam Condensers, N.O.I.B.N	Jersey City. .N.J.	Baytown. . . .Tex.	4	208,980	11	229.88	62.69
Iron Steam Condensers. .	Jersey City. .N.J.	Houston. . . .Tex.	2	86,880	11	95.57	26.06
Heat Exchangers.	Jersey City. .N.J.	Texas City . .Tex.	1	107,920	11	118.71	32.38
Machinery.	Morganville. .N.J.	Pine Bluff . .Ark.	1	36,400	15	54.60	10.92
Machinery.	Bushwick . . .N.J.	Weehawken. . .N.J.	1	26,600	18	47.88	7.98
Elevator Machinery . . .	Yonkers. . . .N.Y.	Havana . . . .Cuba	1	34,780	17	59.13	10.44
Machinery,N.O.I.B.N. . .	Yonkers. . . .N.Y.	Jefferson Is. .La.	1	25,900	15	38.85	7.80
Elevator Machinery . . .	Yonkers. . . .N.Y.	New Orleans. . La.	2	73.275	15	109.91	21.96

Mica:							
Ground Mica.	Rutherford . .N.J.	Marrero. . . . La.	1	60,000	9	54.00	18.00
Ground Mica.	Rutherford . .N.J.	Marrero. . . . La.	1	60,000	9	54.00	18.00
Olive Oil Foots.	Edgewater. . .N.J.	Havana . . . .Cuba	2	120.800	9	108.72	36.24
Olive Oil Foots.	Edgewater. . .N.J.	Mexico City. .Mex.	1	60,000	9	54.00	18.00
Oils:							
Fish Oil	Bayway . . . .N.J.	New Orleans. . La.	1	39,828	10	39.83	11.95
Linseed Oil.	Edgewater. . .N.J.	Weehawken. . .N.J.	3	172,800	9	155.52	51.84
Linseed Oil.	Edgewater. . .N.J.	New Orleans. . La.	1	47,000	9	42.30	14.10
Paints:							
Kalsomine Dry Powder . .	Harrison . . .N.J.	New Orleans. . La.	1	40,200	8	32.16	12.06
Kalsomine Dry Powder . .	Harrison . . .N.J.	New Orleans. . La.	2	89,900	11	98.89	26.97
Paper:							
Roofing Paper.	Manville . . .N.J.	Gretna . . . . La.	3	176,840	10	176.84	53.05
Roofing Paper.	Manville . . .N.J.	New Orleans. . La.	21	1,052,561	10	1,052.56	315.77
Prepared Roofing.							
Roofing.	Manville . . .N.J.	Havana . . . .Cuba	2	93,975	10	93.98	28.19
Asphalt Shingles and Roofing Material. . . .	Manville . . .N.J.	Marrero. . . . La.	12	603,729	10	603.73	181.12

COMMODITIES SUBJECT TO 10% INCREASE UNDER EX PARTE 123

Commodity	Origin	Destination	No. of Cars	Weight	Rate to Hoboken	Charges to Hoboken	Hoboken Man.R.R. Allowance
Prepared Roofing:							
Asbestos Roofing. . . .	Manville . . .N.J.	Marrero. . . . La.	2	90,005	10	90.01	27.00
Roofing Material. . . .	Manville . . .N.J.	Marrero. . . . La.	1	47,418	10	47.42	14.23
Asbestos Shingles and Roofing Material . . .	Manville . . .N.J.	New Orleans. . La.	2	120,123	10	120.12	36.04
Roofing Material. . . .	Manville . . .N.J.	Hoskins. . . .Tex.	1	30,000	10	30.00	9.00
Prepared Roofing and Asphalt Shingles . . .	Rutherford . .N.J.	New Orleans. . La.	1	46,324	8	37.06	13.90
Petroleum:							
Petroleum Lubricating Oil.	Bayonne. . . .N.J.	Havana . . . .Cuba	1	42,907	10	42.91	12.87
Petroleum Oil Lub . . .	Bayway . . . .N.H.	Havana . . . .Cuba	3	127,800	11	140.58	38.34
Petroleum Oil Lubricating.	Bayway . . . .N.J.	New Orleans. . La.	1	110,000	11	121.00	33.00
Lubricating Oil	Jersey City. .N.J.	Havana . . . .Cuba	1	66,706	10	66.71	20.01
Petroleum Lubricating .	Jersey City. .N.J.	Havana . . . .Cuba	4	207,050	10	207.05	62.12
Railway Equipment.	Jersey City. .N.J.	Havana . . . .Cuba	1	36,000	11	39.60	10.80
Roofing:							
Asbestos Shingle. . . .	Manville . . .N.J.	Gretna . . . . La.	16	824,000	10	824.00	247.20
Roofing Material. . . .	Manville. . . .N.J.	Gretna . . . . La.	2	109,965	10	109.97	32.99
Prepared Roofing Compound	So.Kearney. . .N.J.	New Orleans. . La.	2	89,750	8	71.80	26.93
Sheet Steel Ware:							
Tin Cans.	Jersey City. .N.J.	Weehawken. . .N.J.	1	14,000	16	22.40	4.20
Tin Cans.	Bush Docks . .N.Y.	Houston. . . .Tex.	3	59,082	20	118.16	17.70
Sodium (Soda):							
Sodium Hydrosulphite Sludge	Bayway . . . .N.J.	No.Baton Rouge.La.	2	197,240	12	236.69	59.17
Silicate of Soda. . . .	Carteret . . .N.J.	Hoboken. . . .N.J.	3	272,900	7	191.03	81.87
Silicate of Soda, Bulk Dry	Grasselli. . .N.J.	Marrero. . . . La.	2	129,100	8	103.28	38.73
Silicate of Soda - Bulk Dry	Grasselli. . .N.J.	New Orleans. . La.	2	120,200	8	96.16	36.06
Silicate of Soda - Bulk Dry	Grasselli. . .N.J.	Southport. . . La.	7	448,300	8	358,64	134.49
Silicate of Soda. . . .	Rahway . . . .N.J.	Seatrain Line. . .	2	150,940	9	135,85	45.28
Tanks:							
Steel Tanks	Jersey City. .N.J.	Atreco . . . .Tex.	1	101,700	11	111.87	30.51
Waste:							
Cotton Jute and Woolen Waste.	Rahway . . . .N.J.	Jersey City. .N.S.	1	24,713	17	42.01	7.41
		TOTALS	374	18,910,683		$19,269.34	$5,673.13

Tons 9455.

Average Weight Per Car - Pounds 50,563 - Tons 25.3

Hoboken Manufacturers R.R. Revenue 60 Cents Per Ton $5,673.20
Hoboken Manufacturers R.R. Revenue 66 Cents Per Ton 6,240.53
Hoboken Manufacturers R.R. Revenue Per Car 60 Cent Basis 15.17
Hoboken Manufacturers R.R. Revenue Per Car 66 Cent Basis 16.69

STATEMENT COVERING THE CARLOAD MOVEMENT VIA SEATRAIN LINES TO ORIGINS LESS THAN 100 MILES FROM NEW YORK, N.Y. DURING MAY-JULY-SEPTEMBER AND NOVEMBER, 1936. AND JANUARY AND MARCH 1937.

SOUTHBOUND

SHIPMENTS ENTITLED TO FREE LIGHTERAGE

COMMODITIES SUBJECT TO 10% INCREASE UNDER EX PARTE 123

Commodity	Origin	Destination	No. of Cars	Weight	Rate to Hoboken	Charges to Hoboken	Hoboken Man. R.R. Allowance
Iron and Steel:							
Beams, Channels, Angles.	Bethlehem. . . Pa.	Marshall . . .Tex.	1	71,280	15½	$ 108.70	$ 48.06
Machinery:							
Int. Comb. Engines . . .	Phillipsburg .N.J.	El Paso. . . . .Tex.	1	58,053	20	116.11	39.15
Air Compressor	Phillipsburg .N.J.	Texas City . .Tex.	1	50,085	20	100.17	33.81
Oils:							
Steel Drums Castor Oil .	Jersey City. .N.J.	Jersey City. .N.J.	4	159,785	9½	151.80	107.87
Terra Cotta.	Perth Amboy. .N.J.	Dallas . . . .Tex.	2	72,000	13	93.60	48.60
Wire:							
Steel Wire	Allentown. . . Pa.	Hoboken. . . .N.J.	14	757,225	9½	719.36	511.12
Wire Articles, ...	Allentown. . . Pa.	Havana . . . .Cuba	10	607,140	9½	576.78	409.84
Barbed Wire.	Allentown. . . Pa.	Havana . . . .Cuba	1	47,600	9½	45.22	32.13
Sheet Steel.	Farrell. . . . Pa.	Monterey . . .Mex.	1	94,722	20½	194.18	63.94
		TOTAL . . .	35	1,917,890		$2,105.92	$1,294.52

Tons 959

Average Weight - Per Car - Pounds 54,797 - Tons 27.4

Hoboken Manufacturer R.R. Revenue 1.35 Ton - $1,294.52
Hoboken Manufacturer R.R. Revenue 66 Cents Per Ton $632.90
Hoboken Manufacturer R.R. Revenue Per Car $1.35 Basis $36.99
Hoboken Manufacturer R.R. Revenue 66 Cent Basis $18.08

SOUTH BOUND

SUMMARY

TOTAL	CARS	WEIGHT
5% Commodities . . .	23	1,561,800
10% Commodities . . .	409	20,828,573
TOTAL	432	22,390,373

HOBOKEN MANUFACTURERS REVENUE

TOTAL	CARS	WEIGHT	REVENUE	
5% Commodities . . .	23	1,561,800	60 cents Ton $ 468.54	63 cents Ton $ 491.97
10% Commodities . . .	409	20,828,573	60 cents Ton $6,248.57	66 cents Ton $6,873.43
TOTAL	432	22,390,373	$6,717.11	$7,365.40

Based on the above Totals Average Weight Per Car 51,829 Pounds 25.9 Tons

Average Revenue Per Car at 60 cents Ton $15.55

Average Revenue Per Car at 63 and 66 cents Ton $17.05

PRO. NO. 1102

672-672a

REVISED EXHIBIT No. 41 WITNESS E.A. HODKINSON

SUMMARY OF TRAFFIC STUDIES EXHIBIT NUMBERS 37, 38, 39 and 40.

HOBOKEN MANUFACTURER'S RAILROAD PROPOSAL

PRIOR TO 123 INCREASE

EXHIBIT NO.			Cars	Weight Pounds	Weight Tons	HOBOKEN MANUFACTURERS RAILROAD ALLOWANCE				
						Total at 60¢ Ton	Total at $1.35 Ton	Total	Per Car 60¢ Ton	Per Car $1.35 Ton
	SOUTHBOUND									
40	Origins Less than 100 Miles from Hoboken	Other than Free Lighterage 5%	23	1,561,800	781	$ 468.53	$ -	$ 468.53	$ 20.37	$ -
		Other than Free Lighterage 10%	374	18,910,683	9,455	5,673.20	-	5,673.20	15.17	-
		Free Lighterage 5%	-	-	-	-	-	-	-	-
		Free Lighterage 10%	35	1,917,890	959	-	1,294.52	1,294.52	-	36.99
39	Origins Over 100 Miles from Hoboken. . .	Other than Free Lighterage 5%	30	1,580,384	790	474.12	-	474.12	15.80	-
		Other than Free Lighterage 10%	365	20,948,596	10,474	6,284.58	-	6,284.58	15.69	-
		Free Lighterage 5%	94	6,749,515	3,375	-	4,555.92	4,555.92	-	48.47
		Free Lighterage 10%	713	39,530,725	9,765	-	26,683.24	26,683.24	-	37.42
	NORTHBOUND									
38	Destinations Less than 100 Miles from Hoboken.	Other than Free Lighterage 5%	256	16,886,721	8,443	5,066.01	-	5,066.01	19.79	-
		Other than Free Lighterage 10%	526	34,112,951	17,056	10,233.89	-	10,233.89	19.46	-
		Free Lighterage 5%	-	-	-	-	-	-	-	-
		Free Lighterage 10%	4	176,803	88	-	119.35	119.35	-	29.84
37	Destinations Over 100 Miles from Hoboken.	Other than Free Lighterage 5%	24	1,209,241	605	363.00	-	363.00	15.13	-
		Other than Free Lighterage 10%	186	10,129,201	5,065	3,039.00	-	3,039.00	16.34	-
		Free Lighterage 5%	31	1,010,740	505	-	682.29	682.29	-	22.01
		Free Lighterage 10%	310	14,084,520	7,042	-	9,507.05	9,507.05	-	30.67
	TOTAL		2,961	168,809,770	84,405			$74,444.70		

Average Per Ton Based on Total Figures Above 88.2 Cents
Average Per Car Based on Total Figures Above $25.14

HOBOKEN MANUFACTURER'S RAILROAD ALLOWANCE BASED ON 60 CENTS PER TON

EXHIBIT NO.			Cars	Weight Pounds	Weight Tons	HOBOKEN MANUFACTURERS R.R. ALLOWANCE	
						60¢ Ton	Per Car
	SOUTHBOUND						
40	Origins less than 100 Miles from Hoboken	Other than Free Lighterage	397	20,472,483	10,236	$ 6,141.60	$ 15.47
		Free Lighterage.	35	1,917,890	959	575.40	16.44
39	Origins over 100 Miles from Hoboken.	Other than Free Lighterage	385	22,528,980	11,265	6,759.00	17.56
		Free Lighterage.	807	46,280,240	23,140	13,884.00	17.20
	NORTHBOUND						
38	Destinations less than 100 Miles from Hoboken. . .	Other than Free Lighterage	782	50,999,672	25,500	15,300.00	19.57
		Free Lighterage.	4	176,803	88	52.80	13.40
37	Destinations over 100 Miles from Hoboken	Other than Free Lighterage	341	15,095,260	7,548	4,528.80	13.28
		Free Lighterage.	210	11,338,442	5,669	3,401.40	16.20
		TOTALS	2,961	168,809,770	84,405	$ 50,643.00	

Average Per Car - $17.10

THE 60 CENT ALLOWANCE REVISEDTO REFLECT EX PARTE 123 INCREASES OF 5% AND 10%

EXHIBIT NO.			Cars	Weight Pounds	Weight Tons	Total 63¢ Ton	Total 66¢ Ton	Total	Per Car
	SOUTHBOUND								
40	Origins Less than 100 Miles from Hoboken 5%.	Other than Free Lighterage	23	1,561,800	-	$ 491.97	$ -	$ 491.97	$ 21.39
		Free Lighterage.	-	-	-	-	-	-	-
	Origins Less than 100 Miles from Hoboken 10%.	Other than Free Lighterage	374	18,910,683	-	-	6,240.53	6,240.53	16.69
		Free Lighterage.	35	1,917,890	-	-	632.90	632.90	18.08
39	Origins Over 100 Miles from Hoboken 5%	Other than Free Lighterage	30	1,580,384	-	497.82	-	497.82	16.59
		Free Lighterage.	94	6,749,515	-	2,126.10	-	2,126.10	22.62
	Origins Over 100 Miles from Hoboken 10%	Other than Free Lighterage	385	20,948,596	-	-	6,913.04	6,913.04	19.47
		Free Lighterage.	713	39,530,725	-	-	13,045.14	13,045.14	18.30
	NORTHBOUND								
	Destinations Less than 100 Miles from Hoboken 5%	Other than Free Lighterage	256	16,886,721	-	5,319.28	-	5,319.28	20.78
		Free Lighterage.	-	-	-	-	-	-	-
38	Destinations Less than 100 Miles from Hoboken 10%	Other than Free Lighterage	526	34,112,951	-	-	11,257.27	11,257.27	21.44
		Free Lighterage.	4	176,803	-	-	58.34	58.34	14.58
	Destinations Over 100 Miles from Hoboken 5%	Other than Free Lighterage	24	1,209,241	-	381.15	-	381.15	15.56
37		Free Lighterage.	31	1,010,740	-	318.15	-	318.15	10.26
	Destinations Over 100 Miles from Hoboken 10%	Other than Free Lighterage	186	10,129,201	-	-	3,342.90	3,342.90	17.97
		Free Lighterage.	310	14,084,520	-	-	4,647.20	4,647.20	14.99
		TOTALS	2,961	168,809,770	84,405	$9,134.47	$46,137.32	$55,271.79	

Average Per Ton Based on Total Figures as Above 65.48 cents
Average Per Car Based on Total Figures as Above $18.67

PRO.1113

673-673a

EXHIBIT No. 42

PROPERTY INVESTMENT AND CONDENSED OPERATING INCOME ACCOUNT

CLASS 1 ROADS OF THE EASTERN DISTRICT

CALENDAR YEAR ENDED DECEMBER 31, 1932.

ROAD	Average Miles of Road Operated	Property Investment at End of Year				Total Operating Revenues	Total Operating Expenses	Railway Tax Accruals	Uncollectible Railway Revenues	Equipment Rents - Net Balance	Joint Facility Rents - Net Balance	Net Railway Operating Income	
		Investment in Road and Equipment	Material & Supplies (Acct.716)	Cash (Acct.708)	Total							Amount	Rate of Return on Total Investment
NEW ENGLAND ROADS:													
Bangor & Aroostook	619.44	$35,041,972	$886,757	$255,761	$36,184,490	$5,911,878	$3,926,588	$501,158	$52	Dr $8,129	Dr $10,451	$1,465,500	4.05%
Boston & Maine	2,066.48	278,529,346	5,346,308	6,884,980	290,760,634	45,087,754	32,943,668	2,886,977	2,706	Dr 1,780,187	Dr 127,872	7,346,344	2.52
Canadian National Lines in New England	172.21	12,251,139	404,656	-	12,655,794	1,166,816	1,410,264	161,349	1	Dr 502,551	Cr 1,155	Def 906,194	Def
Canadian Pacific (Lines in Maine)	233.73	9,709,727	-	-	9,709,727	1,681,647	1,897,452	94,638	5	Dr 212,827	Dr 27,516	Def 350,791	Def
Canadian Pacific (Lines in Vermont)	85.40	1,471,007	-	-	1,471,007	1,036,462	1,167,026	66,766	10	Dr 247,154	Dr 3,918	Def 448,412	Def
Central Vermont	457.13	32,972,094	850,905	321,238	33,844,237	5,234,570	4,707,008	290,319	1,704	Cr 162,276	Dr 276,347	211,470	0.62
Maine Central	1,119.63	67,234,527	1,470,655	877,545	69,582,727	11,254,771	8,673,778	651,543	561	Dr 83,561	Dr 294,754	1,550,584	2.23
New York Connecting	20.50	27,340,375	-	250,355	27,590,730	2,558,597	678,792	444,577	-	Dr 89,141	Dr 381,342	1,064,945	3.86
New York, New Haven & Hartford	2,076.98	444,594,588	6,329,585	6,311,673	457,235,846	74,973,252	52,985,207	4,500,077	32,111	Dr 1,803,776	Dr 4,108,712	11,243,367	2.46
Rutland	413.08	27,415,656	493,817	415,914	28,325,389	3,870,106	3,363,500	248,068	784	Cr 19,068	Cr 29,889	306,711	1.08
TOTAL - New England Roads	7,284.63	936,560,433	15,482,682	15,317,466	967,860,581	152,775,853	111,453,281	10,035,472	37,934	Dr 4,545,974	Dr 5,199,788	21,503,484	2.22
OTHER EASTERN DISTRICT ROADS:													
Akron, Canton & Youngstown	171.31	13,012,196	88,170	70,896	13,171,261	1,564,496	1,080,222	141,109	1,765	Dr 118,320	Cr 30	223,110	1.69
Ann Arbor	293.86	25,017,227	376,389	277,090	25,670,706	3,116,589	2,670,393	196,216	712	Dr 274,484	Cr 56,971	31,755	0.12
Atlantic City	184.29	15,977,265	198,470	88,265	16,263,998	1,970,952	2,002,302	461,266	8	Dr 204,373	Cr 127,792	Def 569,205	Def
Baltimore & Ohio	6,397.92	999,089,672	13,457,327	8,688,798	1,021,915,797	125,882,823	91,654,935	8,906,019	50,536	Dr 1,882,257	Dr 1,415,678	21,973,398	2.15
Bessemer & Lake Erie	226.01	65,786,766	830,114	946,600	67,563,480	8,748,396	4,624,423	270,378	2,173	Cr 6,919	Dr 22,958	Def 1,118,701	Def
Cambria & Indiana	37.65	8,387,513	51,297	1,154,945	9,593,755	1,126,186	779,252	165,954	-	Cr 660,271	Cr 1,200	842,451	8.78
Central R.R. of New Jersey	692.13	201,683,652	1,966,542	1,793,902	205,444,096	30,357,469	22,182,892	4,857,561	9,939	Dr 669,472	Dr 110,487	2,507,296	1.22
Chicago & Eastern Illinois	938.89	81,427,522	727,457	836,307	82,991,286	12,189,973	10,846,392	1,280,000	6,787	Dr 796,092	Dr 744,089	Def 1,283,327	Def
Chicago & Erie	269.56	40,703,524	223,769	69,253	40,996,546	8,904,312	5,816,540	418,900	1,600	Dr 1,956,211	Dr 644,389	166,908	0.41
Chicago & Illinois Midland	131.84	12,358,890	228,836	49,004	12,636,730	2,056,561	1,670,036	106,087	21	Cr 41,665	Dr 92,788	231,512	1.83
Chicago, Indianapolis & Louisville	644.59	54,422,408	686,271	36,554	55,145,233	7,916,339	6,457,415	480,318	1,196	Dr 386,822	Dr 702,348	Def 111,783	Def
Delaware & Hudson	854.81	127,666,957	2,936,492	509,585	131,113,034	23,225,154	22,255,109	952,133	803	Cr 167,289	Dr 168,880	16,538	0.01
Delaware, Lackawanna & Western	998.42	332,687,674	1,951,914	3,468,492	338,108,080	46,447,856	37,055,579	5,216,791	4,907	Dr 291,980	Cr 133,358	4,011,954	1.19
Detroit & Mackinac	242.08	7,296,199	167,663	16,714	7,479,576	759,895	606,788	50,002	354	Cr 3,960	Dr 2,738	103,973	1.39
Detroit & Toledo Shore Line	50.24	9,086,956	147,177	424,308	9,657,441	2,305,540	1,242,199	226,650	8,636	Dr 300,847	Dr 156,391	368,857	3.82
Detroit, Toledo & Ironton	488.24	45,580,285	534,861	222,743	46,287,889	4,130,256	3,040,488	515,289	3,400	Dr 83,510	Dr 43,315	474,254	1.02
Elgin, Joliet & Eastern	447.08	89,999,656	1,161,004	697,780	91,858,442	7,764,069	7,173,469	1,196,154	1,846	Dr 328,440	Dr 84,927	Def 1,016,847	Def
Erie	2,044.47	329,517,208	3,172,734	5,794,914	337,484,856	64,841,762	50,031,273	4,370,391	19,076	Dr 2,237,005	Cr 479,523	8,663,830	1.61
Grand Trunk Western	1,022.42	111,378,243	1,734,019	394,772	113,507,034	13,912,792	13,727,566	1,087,488	33,492	Dr 632,145	Dr 463,199	Def 2,031,098	Def
Illinois Terminal Co.	545.26	53,821,549	394,179	270,551	54,486,279	4,551,049	3,366,302	278,161	503	Dr 137,559	Dr 187,755	580,769	1.07
Lehigh & Hudson River	98.60	7,134,769	77,046	46,010	7,257,825	1,579,505	1,125,613	149,468	-	Dr 91,930	Dr 66,022	146,472	2.02
Lehigh & New England	218.61	21,527,303	341,770	271,229	22,140,302	3,274,739	2,480,537	48,565	9	Cr 199,860	Dr 96,643	848,845	3.83
Lehigh Valley	1,362.05	271,897,132	2,446,423	3,096,280	277,439,835	38,739,138	31,686,181	2,670,831	4,920	Dr 796,852	Dr 370,986	3,210,368	1.16
Long Island	399.97	139,047,408	811,026	931,472	140,789,901	28,220,076	18,497,386	2,479,111	7,568	Dr 460,655	Dr 1,729,432	5,045,925	3.58
Missouri-Illinois	202.33	7,118,256	118,922	63,852	7,301,030	875,561	716,186	63,965	49	Dr 74,744	Dr 4,179	16,438	0.23
Monongahela	177.87	26,078,614	284,757	665,522	27,028,893	3,634,116	1,481,547	187,258	643	Dr 792,913	Dr 29,325	1,142,450	4.23
Montour	57.67	9,801,545	169,781	527,847	10,499,193	1,508,978	990,714	41,288	2	Cr 214,720	Cr 217	691,911	6.59
New Jersey & New York	45.72	3,768,599	7,084	120,565	3,896,218	1,103,750	1,069,763	60,109	1,058	Dr 96,421	Dr 140,651	Def 263,251	Def
New York Central (Inc.U.& D.)	11,449.06	2,131,388,099	29,386,055	22,656,265	2,183,398,399	293,682,480	227,232,871	30,099,958	90,672	Dr 11,282,912	Dr 4,190,678	20,786,389	0.95
New York, Chicago & St.Louis	1,660.38	228,644,148	2,378,808	3,011,922	244,034,878	29,156,488	22,106,727	1,970,186	9,059	Dr 2,429,644	Dr 501,699	2,141,153	0.88
New York, Ontario & Western	568.51	97,651,766	866,209	319,904	98,723,879	10,571,876	7,522,187	547,395	881	Dr 554,405	Dr 86,776	1,860,232	1.88
New York, Susquehanna & Western	131.52	39,285,555	72,083	721,774	40,079,382	3,522,186	2,505,745	356,817	2,370	Dr 187,548	Cr 7,545	475,251	1.19
Pennsylvania	10,992.46	2,560,367,288	28,413,934	31,140,799	2,607,922,001	331,393,458	242,011,603	28,231,430	75,227	Dr 10,620,693	Dr 1,322,487	49,132,058	1.88
Pere Marquette	2,314.04	162,800,408	1,538,530	2,562,282	172,901,220	21,461,277	18,189,896	1,573,636	26,251	Dr 754,269	Dr 591,753	325,472	0.19
Pittsburgh & Lake Erie	236.19	117,345,623	2,044,860	3,002,913	122,393,426	12,521,976	7,214,296	1,097,675	1,395	Cr 1,504,082	Dr 65,594	1,847,098	1.38
Pittsburg & Shawmut	102.98	13,450,744	83,474	188,048	13,892,266	814,463	660,812	11,530	18	Dr 12,334	Dr 441	129,328	0.94
Pittsburgh & West Virginia	138.25	57,921,410	102,456	410,010	58,433,876	2,239,822	1,739,947	131,069	617	Cr 282,671	Dr 31,837	619,023	1.06
Pittsburg, Shawmut & Northern	197.33	25,064,795	126,446	92,749	25,283,960	935,592	903,652	28,480	-	Dr 42,712	Dr 6,293	Def 45,515	Def
Reading Company	1,480.99	451,084,540	5,300,339	803,443	457,188,322	51,806,374	38,804,169	1,590,520	7,063	Dr 478,476	Cr 160,470	11,086,616	2.42
Staten Island Rapid Transit	23.54	13,982,186	137,463	241,379	14,301,030	1,804,889	1,408,976	218,592	25	Dr 320,176	Cr 122,118	Def 9,762	Def
Wabash	2,680.87	299,761,370	3,043,223	2,226,236	305,020,828	37,785,634	30,684,901	2,387,723	20,613	Dr 2,557,487	Dr 1,610,241	524,669	0.17
Western Maryland	891.73	159,155,112	1,377,544	2,149,311	162,681,967	12,081,684	7,521,365	780,213	3,107	Cr 123,690	Dr 185,826	3,714,863	2.28
Wheeling & Lake Erie	511.90	92,820,936	655,654	2,819,362	96,296,952	8,536,235	6,466,267	929,289	372	Dr 250,298	Cr 15,161	903,170	0.94
TOTAL - Other Eastern Dist. Roads	52,320.52	9,736,746,892	108,783,504	103,838,946	9,949,369,382	1,264,024,805	965,101,715	106,831,924	399,577	Dr 38,885,661	Dr 14,613,481	138,192,447	1.39
GRAND TOTAL - Eastern District	59,605.05	10,673,307,325	124,266,186	119,156,412	10,916,729,963	1,416,800,658	1,076,554,995	116,867,396	437,511	Dr 43,431,636	Dr 19,813,269	159,696,871	1.46

NOTE - The figures of "Investment in Road and Equipment" represent the investment shown by carriers' books including the investment of leased lines, etc., the earnings from which are included in "Net railway operating income".

SOURCE: Carriers annual reports to the Interstate Commerce Commission.

PROPERTY INVESTMENT AND CONDENSED OPERATING INCOME ACCOUNT

CLASS 1 ROADS OF THE EASTERN DISTRICT

CALENDAR YEAR ENDED DECEMBER 31, 1933.

ROAD	Average miles of road operated	Property investment at end of year				Total operating revenues	Total operating expenses	Railway tax accruals	Uncollectible railway revenues	Equipment rents - net balance	Joint facility rents - net balance	Net railway operating income	
		Investment in road and equipment	Material & supplies (Acct. 716)	Cash (Acct. 708)	Total							Amount	Rate of return on total investment
NEW ENGLAND ROADS:													
Bangor & Aroostook	605.13	$34,745,664	$832,000	$386,513	$35,962,177	$5,805,512	$3,528,443	$517,857	$866	Dr $10,108	Dr $8,738	$1,741,500	4.84%
Boston & Maine	2,081.31	275,524,479	4,967,533	3,705,108	287,197,120	41,877,369	30,389,675	2,563,333	1,382	Dr 1,881,604	Cr 7,140	7,068,315	2.46
Canadian National Lines in New England	172.21	12,221,146	35,450	-	12,573,596	1,039,090	1,267,187	150,628	304	Dr 437,660	Cr 1,167	Def 815,522	Def
Canadian Pacific (Lines in Maine)	233.73	9,747,174	-	-	9,747,174	1,563,486	1,379,381	80,780	75	Dr 206,689	Dr 25,034	Def 108,473	Def
Canadian Pacific (Lines in Vermont)	85.40	1,801,750	-	-	1,801,750	897,591	1,032,480	62,317	3	Dr 196,837	Dr 3,707	Def 397,753	Def
Central Vermont	457.13	33,117,214	524,652	291,528	33,943,394	5,008,979	4,372,655	189,016	883	Cr 148,074	Dr 265,498	328,421	0.97
Maine Central	1,066.63	67,805,783	1,164,144	1,042,393	69,412,320	10,556,435	7,574,628	554,521	703	Dr 196,158	Dr 298,322	1,933,103	2.78
New York Connecting	20.51	27,341,539	-	468,657	27,810,196	2,730,165	572,940	377,626	-	Dr 100,578	Dr 418,012	1,261,009	4.53
New York, New Haven & Hartford	2,068.50	444,520,577	5,733,443	3,086,439	453,340,459	67,224,751	49,227,027	4,445,006	46,632	Dr 1,814,474	Dr 3,996,185	7,695,427	1.70
Rutland	413.03	27,412,176	446,020	387,646	28,245,842	3,386,806	3,026,254	237,470	307	Cr 38,729	Cr 128,246	286,750	1.02
TOTAL - New England Roads	7,223.57	936,635,502	14,030,242	9,398,284	960,034,028	140,109,284	102,368,870	9,178,554	50,835	Dr 4,639,306	Dr 4,878,943	18,992,777	1.98
OTHER EASTERN DISTRICT ROADS:													
Akron, Canton & Youngstown	171.31	12,010,748	87,369	182,714	13,280,861	1,594,629	1,020,584	106,794	173	Dr 144,509	Cr 30	322,599	2.43
Ann Arbor	293.86	14,820,857	286,650	189,123	15,075,630	2,985,896	2,381,686	164,977	296	Dr 254,725	Cr 36,036	220,246	0.88
Baltimore & Ohio	6,401.78	987,243,034	10,081,093	6,674,117	1,003,998,244	131,792,253	90,369,700	8,156,726	32,854	Dr 2,818,768	Dr 1,564,004	28,849,201	2.87
Bessemer & Lake Erie	225.52	65,830,053	610,275	1,679,452	68,119,780	6,742,869	4,806,866	272,207	27	Cr 12,568	Cr 28,215	1,703,552	2.50
Cambria & Indiana	37.65	8,376,114	89,279	981,167	9,396,560	1,186,844	802,069	189,163	-	Cr 752,312	Cr 1,200	949,124	10.10
Central R.R. of New Jersey	691.81	199,288,336	1,756,869	2,561,948	203,589,173	27,401,329	19,648,591	4,500,328	3,406	Dr 910,733	Dr 84,503	2,253,768	1.11
Chicago & Eastern Illinois	538.89	81,485,708	583,528	412,227	82,481,463	12,218,449	9,601,058	920,000	3,792	Dr 799,384	Dr 686,918	207,297	0.25
Chicago & Erie	269.56	40,780,189	210,255	77,989	41,048,403	8,929,613	5,037,456	414,029	1,395	Dr 2 392,843	Dr 517,197	866,693	2.11
Chicago & Illinois Midland	191.84	11,963,315	285,768	532,926	12,806,009	5,026,349	1,929,671	138,672	13	Cr 138,886	Dr 93,858	1,003,023	7.83
Chicago, Indianapolis & Louisville	646.84	54,366,736	680,112	220,709	55,267,566	7,228,716	5,745,056	428,45	669	Dr 386,943	Dr 685,675	Def 21,083	Def
Delaware & Hudson	850.54	128,925,728	2,631,679	1,206,146	132,763,553	22,178,122	20,281,712	942,458	1,932	Cr 238,965	Dr 173,994	1,016,991	0.77
Delaware, Lackawanna & Western	598.42	331,565,509	1,825,073	4,212,062	337,605,644	45,339,279	34,777,127	4,715,877	9,233	Dr 486,957	Cr 133,215	3,480,300	1.03
Detroit & Mackinac	242.08	2,279,887	156,235	31,332	2,463,454	601,961	508,925	42,747	16	Dr 1,738	Dr 1,689	46,846	0.63
Detroit & Toledo Shore Line	50.24	8,100,640	106,306	689,652	8,896,598	2,582,417	1,263,655	238,781	2,764	Dr 328,241	Dr 157,221	570,755	5.77
Detroit, Toledo & Ironton	472.31	44,894,404	465,976	1,063,609	46,423,989	4,042,660	2,432,213	362,810	8,633	Dr 121,374	Dr 41,311	1,076,319	2.32
Elgin, Joliet & Eastern	446.19	80,461,612	1,133,265	773,059	82,367,936	9,985,608	7,563,736	1,001,588	414	Dr 419,769	Dr 71,713	928,388	1.49
Erie	2,046.43	526,036,292	3,414,980	6,611,540	536,061,812	83,156,792	46,576,076	3,531,957	34,096	Dr 1,818,261	Cr 456,133	11,656,455	2.17
Grand Trunk Western	1,006.56	78,948,387	1,418,287	423,070	111,786,744	14,958,766	13,724,723	868,467	6,340	Dr 864,259	Dr 449,378	Def 954,401	Def
Illinois Terminal Co.	525.54	52,513,231	314,736	865,522	53,693,489	4,743,837	3,202,293	287,210	538	Dr 209,517	Dr 166,326	883,963	1.65
Lehigh & Hudson River	96.60	6,785,814	84,391	53,897	6,924,102	1,443,351	982,743	132,675	-	Dr 88,048	Dr 61,548	181,337	2.62
Lehigh & New England	228.28	21,066,357	356,474	347,393	21,769,359	3,000,725	2,300,107	87,364	110	Cr 177,801	Dr 88,688	702,257	3.23
Lehigh Valley	1,358.59	268,083,005	2,927,598	2,240,589	273,251,292	38,177,450	30,232,057	2,343,371	7,112	Dr 1,075,851	Dr 407,680	4,107,569	1.50
Long Island	400.23	139,603,563	778,482	630,738	141,012,783	24,068,582	15,385,988	2,350,155	8,624	Dr 454,242	Dr 1,638,918	4,230,658	3.00
Missouri-Illinois	213.71	7,066,646	84,022	133,705	7,284,373	850,168	666,421	71,667	74	Dr 72,319	Dr 5,880	32,807	0.45
Monongahela	177.81	26,080,811	254,612	432,896	26,768,319	3,584,699	1,338,727	224,247	512	Dr 821,655	Dr 34,557	1,166,001	4.36
Montour	37.67	9,802,096	144,761	225,948	10,172,832	1,662,916	1,100,358	54,029	-	Cr 213,884	Cr 103	722,516	7.10
New Jersey & New York	45.72	3,824,758	580	91,250	3,920,598	939,120	1,010,186	47,940	70	Dr 98,022	Dr 120,259	Def 334,357	Def
New York Central	11,413.82	2,117,484,463	30,902,263	20,682,205	2,169,068,933	283,341,102	207,923,294	28,456,637	173,396	Dr 11,592,638	Dr 3,925,975	33,269,162	1.53
New York, Chicago & St. Louis	1,690.85	233,840,346	1,627,154	2,154,779	235,622,279	30,647,506	20,734,958	1,641,606	6,293	Dr 2,611,693	Dr 435,069	5,216,887	2.21
New York, Ontario & Western	568.40	97,817,238	814,831	257,861	98,890,030	9,644,523	6,978,679	436,578	1,140	Dr 446,020	Dr 77,294	1,706,812	1.73
New York, Susquehanna & Western	131.52	39,165,867	43,563	506,844	39,722,294	3,160,853	2,362,861	275,164	1,181	Dr 164,754	Cr 12,828	369,721	0.93
Pennsylvania	10,693.29	2,527,496,734	26,437,962	19,167,337	2,573,101,033	324,715,814	226,768,347	24,459,600	120,451	Dr 9,634,386	Dr 1,756,171	61,976,859	2.41
Penna.-Reading Seashore Lines	329.90	43,307,701	132,530	637,344	43,577,575	4,092,778	4,064,921	820,725	198	Dr 652,152	Dr 57,852	Def 1,504,070	Def
Pere Marquette	2,296.43	166,098,432	1,244,407	1,972,681	171,315,561	21,947,295	17,892,720	1,071,231	13,614	Dr 677,615	Dr 567,659	1,724,456	1.01
Pittsburgh & Lake Erie	233.66	117,047,873	2,407,548	1,650,597	121,146,018	14,982,937	11,972,709	1,083,648	47	Cr 1,481,620	Dr 71,934	2,906,119	2.40
Pittsburg & Shawmut	102.96	13,576,795	113,464	92,817	13,788,036	870,421	580,486	5,022	-	Cr 22,273	Dr 503	126,743	0.92
Pittsburgh & West Virginia	138.28	57,433,415	302,390	162,421	57,898,226	2,530,258	1,713,273	242,513	-	Cr 348,410	Dr 19,042	904,840	1.56
Pittsburg, Shawmut & Northern	185.9	24,969,416	98,408	104,468	25,172,345	989,450	820,421	26,095	2	Dr 48,426	Dr 6,885	90,621	0.36
Reading Company	1,461.5	456,745,460	5,240,837	3,000,287	464,986,584	49,464,052	33,148,528	2,539,491	17,465	Dr 223,445	Cr 41,945	13,577,068	2.96
Staten Island Rapid Transit	23.54	14,171,131	91,988	106,629	14,369,748	1,711,805	1,333,538	173,550	25	Dr 318,934	Cr 126,917	12,675	0.09
Wabash	2,471.9	294,772,555	2,820,273	2,941,449	299,534,277	36,207,016	27,577,369	1,817,106	8,883	Dr 2,418,077	Dr 1,640,091	2,745,490	0.92
Western Maryland	881.76	156,523,232	1,236,413	1,961,861	162,720,526	12,345,048	7,845,337	736,550	2,594	Cr 452,833	Dr 154,198	4,080,202	2.50
Wheeling & Lake Erie	511.60	92,781,956	737,997	846,830	94,346,782	10,563,820	7,794,603	966,780	788	Dr 149,676	Dr 1,616	1,651,357	1.75
TOTAL - Other Eastern Dist. Roads	52,180.41	9,690,220,443	103,988,983	89,861,391	9,884,070,817	1,244,023,888	904,176,768	95,348,991	469,172	Dr 39,394,210	Dr 14,928,981	194,705,766	1.97
GRAND TOTAL - Eastern District	59,403.98	10,626,855,945	118,019,225	99,219,675	10,844,094,845	1,389,133,172	1,006,545,638	104,527,545	520,007	Dr 44,033,515	Dr 19,807,924	213,698,543	1.97

NOTE The figures of "Investment in road and equipment" represent the investment shown by carriers' books, including the investment of leased lines, etc., the earnings from which are included in "Net railway operating income".

PROPERTY INVESTMENT AND CONDENSED OPERATING INCOME ACCOUNT

CLASS 1 ROADS OF THE EASTERN DISTRICT

CALENDAR YEAR ENDED DECEMBER 31, 1954

Road	Average miles of road operated	Property investment at end of year				Total operating revenues	Total operating expenses	Railway tax accruals	Uncollectible railway revenue	Equipment rents - net balance	Joint facility rents - net balance	Net railway operating income	
		Investment in road and equipment	Material & supplies (Acct.716)	Cash (Acct.708)	Total							Amount	Rate of return on total investment
NEW ENGLAND ROADS:													
Bangor & Aroostook	598.19	$ 34,737,116	$ 827,248	$ 339,215	$ 35,903,580	$ 6,167,890	$ 3,928,030	$ 522,652	$ 432	Dr $ 10,733	Dr $ 8,300	$ 1,693,743	4.72%
Boston & Maine	2,340.34	276,761,666	5,052,910	2,931,548	286,746,124	42,155,612	30,872,271	2,431,776	30,605	Dr 1,830,860	Dr 96,565	6,893,515	2.40
Canadian National Lines in New England	172.21	12,056,602	312,519	-	12,371,121	1,053,675	1,279,938	128,249	22	Dr 426,617	Cr 1,179	Def 789,972	Def
Canadian Pacific (Lines in Maine)	233.73	9,745,995	-	-	9,745,995	1,985,675	1,705,736	76,080	42	Dr 218,091	Dr 27,108	Def 38,382	Def
Canadian Pacific (Lines in Vermont)	80.40	1,805,913	-	-	1,805,913	930,136	1,137,027	59,061	20	Dr 191,874	Dr 4,616	Def 462,402	Def
Central Vermont	455.59	30,874,138	478,546	238,280	31,590,964	4,953,347	4,542,744	190,581	874	Cr 107,117	Dr 216,711	109,574	0.35
Maine Central	1,046.68	77,232,093	1,084,588	1,032,992	69,549,773	10,931,066	8,000,144	573,466	1,441	Dr 211,305	Dr 306,641	1,838,069	2.64
New York Connecting	20.50	27,342,971	-	443,035	27,785,100	2,700,496	590,909	400,783	-	Dr 64,639	Dr 380,541	1,263,624	4.55
New York,New Haven & Hartford	2,060.91	440,204,192	6,658,641	4,196,498	451,049,331	69,883,110	52,714,212	4,511,678	20,595	Dr 2,286,969	Dr 4,130,436	5,617,020	1.25
Rutland	407.29	27,303,790	306,516	308,069	27,998,375	3,243,406	3,071,677	235,406	586	Cr 15,787	Cr 29,866	Def 13,810	Def
TOTAL - New England Roads	7,390.34	930,065,876	15,001,069	9,479,637	954,546,282	143,409,413	107,840,888	9,135,932	54,617	Dr 5,127,204	Dr 5,140,073	16,110,899	1.69
OTHER EASTERN DISTRICT ROADS:													
Akron,Canton & Youngstown	171.31	12,911,095	93,023	292,460	13,296,578	1,721,879	1,142,323	123,080	1,010	Dr 168,734	Cr 30	286,762	2.16
Ann Arbor	203.66	21,742,306	237,579	272,259	22,252,143	3,307,260	2,574,839	131,556	55	Dr 255,390	Cr 29,239	374,659	1.68
Baltimore & Ohio	6,389.76	981,308,267	9,116,687	6,000,418	996,585,372	135,539,395	99,337,764	5,908,009	54,686	Dr 2,764,435	Dr 1,616,492	23,677,939	2.37
Bessemer & Lake Erie	251.52	65,594,694	636,206	1,047,483	67,280,383	8,304,766	6,810,296	322,841	17	Cr 98,404	Cr 37,186	1,307,203	1.94
Cambria & Indiana	37.65	8,372,213	46,805	660,873	9,079,909	1,948,814	1,033,006	140,575	6	Cr 783,696	Cr 1,200	657,824	7.24
Central R.R.of New Jersey	300.73	194,624,233	1,955,885	3,765,566	200,345,684	29,022,116	20,247,793	4,545,868	21,062	Dr 1,030,272	Dr 116,389	3,060,752	1.53
Chicago & Eastern Illinois	439.89	77,022,298	615,678	429,317	78,067,284	12,776,551	9,945,374	685,000	4,888	Dr 854,117	Dr 645,675	641,697	0.82
Chicago & Illinois Midland	181.64	18,061,835	276,918	354,144	18,692,867	2,974,211	2,122,611	110,961	85	Cr 139,791	Dr 75,837	804,488	6.34
Chicago,Indianapolis & Louisville	644.59	54,235,743	697,032	363,692	55,296,467	7,427,489	6,168,313	7,752	1,192	Dr 436,163	Dr 694,279	119,800	0.22
Delaware & Hudson	840.54	129,744,443	2,355,549	873,033	132,973,025	22,176,469	20,381,934	843,812	2,086	Cr 333,640	Dr 163,412	2,116,875	1.59
Delaware,Lackawanna & Western	982.65	317,568,790	2,960,176	3,131,389	322,760,354	44,592,530	38,536,791	4,292,970	13,109	Dr 412,093	Cr 136,613	4,504,180	1.40
Detroit & Mackinac	242.06	7,241,951	160,648	128,296	7,530,895	832,904	514,333	1,734	24	Dr 13,624	Dr 1,268	101,921	1.35
Detroit & Toledo Shore Line	50.24	9,030,504	118,987	529,015	9,678,586	2,952,066	1,399,485	231,896	854	Dr 378,712	Dr 165,039	731,070	7.55
Detroit,Toledo & Ironton	470.37	44,845,822	476,582	2,400,145	47,722,549	5,837,776	3,005,028	534,501	48,343	Dr 225,984	Dr 40,892	1,963,028	4.09
Elgin,Joliet & Eastern	446.09	58,774,362	985,226	1,416,404	62,176,592	10,299,344	8,344,359	886,939	192	Dr 333,524	Dr 72,696	961,634	1.06
Erie (Incl.Chgo.& Erie)	1,310.73	591,826,403	3,872,849	5,497,772	581,197,024	75,064,122	54,311,872	3,951,598	17,767	Dr 4,012,687	Dr 70,886	12,699,832	2.19
Grand Trunk Western	1,007.28	106,366,433	1,490,335	687,008	108,544,276	17,158,392	14,867,118	834,474	15,797	Dr 624,787	Dr 423,748	392,466	0.36
Illinois Terminal Co.	559.54	98,105,296	314,916	811,494	99,231,706	4,930,061	3,427,881	295,408	124	Dr 207,218	Cr 4,187	1,003,617	1.69
Lehigh & Hudson River	96.60	6,643,309	65,823	120,548	6,829,680	1,447,589	1,035,870	123,608	33	Dr 83,740	Dr 62,649	151,689	2.22
Lehigh & New England	229.80	21,692,185	418,881	513,595	22,614,601	3,455,844	2,666,758	62,096	96	Cr 164,538	Dr 113,716	761,746	3.37
Lehigh Valley	1,353.75	268,436,357	2,566,755	2,589,053	274,592,165	39,866,526	30,921,606	2,006,988	4,164	Dr 1,280,281	Dr 315,299	5,336,991	1.94
Long Island	344.44	139,961,233	876,129	610,679	141,450,041	24,227,481	17,146,582	2,595,547	9,571	Dr 486,844	Dr 1,616,015	2,372,922	1.68
Missouri-Illinois	213.71	6,967,179	126,932	163,813	7,277,924	959,753	753,657	60,697	236	Dr 79,696	Dr 5,691	59,775	0.82
Monongahela	174.71	22,462,661	246,748	818,019	30,228,427	3,820,585	1,671,276	229,412	141	Dr 923,478	Dr 29,735	1,066,543	3.53
Montour	57.87	9,736,915	153,150	118,144	10,064,209	1,862,603	1,134,516	170,042	4	Cr 216,676	Dr 383	774,331	7.69
New Jersey & New York	41.72	3,855,137	3,034	56,700	3,916,871	828,269	1,041,112	48,447	752	Dr 93,821	Dr 100,968	Def 436,831	Def
New York Central	11,394.04	2,045,646,136	27,733,199	19,867,569	2,133,596,966	295,044,881	224,171,760	24,836,981	178,056	Dr 11,980,673	Dr 4,756,483	29,160,928	1.37
New York,Chicago & St.Louis	621.19	228,235,839	1,370,897	2,108,650	238,775,386	33,143,864	22,692,256	1,676,057	4,767	Dr 2,779,654	Dr 481,703	5,509,427	2.31
New York,Ontario & Western	567.11	97,966,904	1,037,590	125,221	99,129,715	9,389,831	7,088,040	437,341	3,836	Dr 525,793	Dr 82,743	1,252,078	1.26
New York,Susquehanna & Western	215.32	45,502,921	71,832	293,648	45,900,401	3,606,660	2,748,994	261,775	2,739	Dr 287,663	Cr 37,717	343,186	0.75
Pennsylvania	10,484.55	2,559,346,996	27,375,791	22,562,147	2,609,283,904	343,668,699	248,786,108	23,731,426	136,986	Dr 8,174,474	Dr 1,523,689	61,317,016	2.35
Penna.-Reading Seashore Lines	423.17	44,161,753	161,524	630,593	44,961,870	5,867,337	5,557,389	985,291	135	Dr 956,662	Dr 233,791	Def 1,867,931	Def
Pere Marquette	2,140.30	166,095,349	1,170,324	2,083,940	169,356,613	24,597,190	19,425,960	1,172,167	6,330	Dr 842,430	Dr 524,935	2,618,368	1.56
Pittsburg & Lake Erie	233.66	116,000,843	2,093,601	2,024,192	120,318,636	15,036,943	12,860,601	807,235	2,460	Cr 1,766,714	Dr 28,528	3,304,833	2.75
Pittsburg & Shawmut	132.06	13,532,721	92,716	81,882	13,707,321	642,980	594,092	8,914	140	Cr 56,064	Dr 472	94,516	0.69
Pittsburgh & West Virginia	136.25	57,869,002	198,684	73,430	58,141,116	2,720,147	2,003,046	242,904	-	Cr 384,846	Dr 23,072	835,971	1.44
Pittsburg,Shawmut & Northern	195.30	25,773,883	106,169	11,412	25,191,464	921,045	884,621	25,342	385	Dr 60,542	Dr 7,849	Def 57,694	Def
Reading Company	1,461.39	447,296,686	5,092,933	4,131,386	456,512,905	53,076,431	36,885,154	3,603,346	8,476	Cr 168,546	Cr 108,972	12,856,973	2.82
Staten Island Rapid Transit	33.54	17,602,625	114,420	179,292	17,926,337	1,649,401	1,462,116	192,901	8	Dr 332,914	Cr 95,743	Def 242,795	Def
Wabash	2,455.06	290,386,754	1,711,122	2,874,199	302,972,075	38,235,813	28,523,481	1,325,929	7,963	Dr 2,476,441	Dr 1,546,727	4,355,273	1.44
Western Maryland	808.86	158,815,030	1,416,382	2,348,021	162,579,733	13,883,275	9,444,083	717,717	956	Cr 377,296	Cr 8,363	4,106,178	2.53
Wheeling & Lake Erie	511.60	92,807,133	955,981	1,856,284	95,660,298	11,239,794	6,504,960	823,137	2,232	Dr 135,920	Dr 8,716	1,764,829	1.84
TOTAL - Other Eastern Dist.Roads	51,923.02	9,682,654,520	100,726,118	93,932,464	9,880,312,102	1,316,188,796	979,014,787	92,093,261	550,565	Dr 38,701,618	Dr 15,290,497	190,538,071	1.93
GRAND TOTAL - Eastern District	59,061.36	10,612,720,096	115,726,187	103,412,101	10,834,858,384	1,459,598,209	1,086,855,675	101,229,193	605,182	Dr 43,828,819	Dr 20,430,570	206,648,970	1.91

(a) Does not include $21,747,767 net investment for improvements to owned and leased lines charged off through income or expenses prior to July 1, 1907.

NOTE: The figures of "Investment in road and equipment" represent the investment shown by carriers' books,including the investment of leased lines,etc.,the earnings from which are included in "Net railway operating income".

PROPERTY INVESTMENT AND CONDENSED OPERATING INCOME ACCOUNT

CLASS 1 ROADS OF THE EASTERN DISTRICT

CALENDAR YEAR ENDED DECEMBER 31, 1935.

ROAD	Average Miles of Road Operated	Property Investment at End of Year				Total Operating Revenues	Total Operating Expenses	Railway Tax Accruals	Uncollectible Railway Revenues	Equipment Rents - Net Balance	Joint Facility Rents - Net Balance	Net Railway Operating Income	
		Investment in Road and Equipment	Material & Supplies (Acct.716)	Cash (Acct.708)	Total							Amount	Rate of Return on Total Investment
NEW ENGLAND ROADS:													
Bangor & Aroostook	598.19	$34,877,726	$827,217	$369,149	$36,074,092	$6,067,315	$3,869,370	$510,512	$118	Cr $14,503	Dr $8,306	$1,693,512	4.42%
Boston & Maine	2,015.26	276,308,695	4,779,104	3,067,902	284,155,701	43,624,737	32,549,275	2,435,423	3,689	Dr 1,930,119	Dr 98,313	6,817,918	2.33
Canadian National Lines in New England	172.21	12,039,749	268,917	-	12,308,666	1,140,220	1,376,021	144,602	-	Dr 444,997	Cr 1,221	Def 824,179	Def
Canadian Pacific (Lines in Maine)	233.73	9,762,664	-	-	9,762,664	1,882,077	1,757,593	82,835	11	Dr 198,750	Dr 27,656	Def 179,768	Def
Canadian Pacific (Lines in Vermont)	85.40	1,822,536	-	-	1,822,536	962,695	1,190,618	59,343	7	Dr 198,215	Dr 3,001	Def 488,469	Def
Central Vermont	455.59	32,282,002	520,729	216,620	33,019,351	5,423,305	4,779,716	167,619	1,584	Cr 62,898	Dr 217,748	319,536	0.97
Maine Central	1,052.17	65,580,110	1,176,116	1,223,496	68,279,720	11,431,533	8,406,899	592,639	1,027	Dr 311,570	Dr 309,668	1,809,730	2.65
New York Connecting	10.50	27,342,264	-	456,478	27,798,742	2,727,298	650,506	407,904	-	Dr 56,611	Dr 353,668	1,256,609	4.52
New York, New Haven & Hartford	2,070.07	434,488,461	5,757,894	3,231,139	443,477,494	71,113,280	52,414,423	4,134,126	21,943	Dr 1,956,858	Dr 4,406,382	8,179,548	1.84
Rutland	407.29	27,157,652	325,193	378,343	27,861,188	3,213,312	3,127,879	235,865	47	Dr 16,330	Cr 26,328	Def 138,481	Def
TOTAL - New England Roads	7,110.40	921,961,859	13,655,169	8,943,126	944,560,154	147,585,772	110,222,300	8,760,868	28,426	Dr 5,031,049	Dr 5,397,193	18,145,936	1.92
OTHER EASTERN DISTRICT ROADS:													
Akron, Canton & Youngstown	171.31	12,996,244	92,841	551,125	13,640,210	1,986,860	1,334,947	91,239	418	Dr 177,238	Cr 30	383,048	2.81
Ann Arbor	293.86	21,551,260	266,139	822,447	22,439,846	3,959,274	3,060,302	169,829	1,824	Dr 278,403	Cr 33,642	482,558	2.15
Baltimore & Ohio	6,440.80	1,008,741,911	7,655,614	7,658,758	1,024,006,283	141,873,643	105,464,140	7,232,736	30,380	Dr 2,790,534	Dr 2,056,897	24,298,956	2.37
Bessemer & Lake Erie	225.52	62,079,871	540,658	1,615,527	64,185,056	9,828,107	6,501,024	645,575	11	Cr 309,251	Dr 6,057	2,984,691	4.65
Cambria & Indiana	37.65	8,364,962	47,506	829,200	9,241,758	1,132,262	909,419	183,727	-	Cr 79,736	Cr 1,200	838,052	9.07
Central R.R. of New Jersey	684.10	186,565,267	1,502,208	4,535,518	192,602,993	29,522,639	21,462,672	4,431,878	8,181	Dr 1,334,002	Dr 97,215	2,192,693	1.14
Chicago & Eastern Illinois	338.26	75,707,991	741,131	1,168,036	77,617,158	13,431,904	10,627,133	640,000	4,311	Dr 833,205	Dr 705,501	622,754	0.80
Chicago & Illinois Midland	131.64	12,072,419	263,652	217,603	12,553,674	3,248,356	2,323,275	131,344	52	Cr 101,861	Dr 75,516	820,030	6.53
Chicago, Indianapolis & Louisville	646.84	53,899,120	632,675	494,873	55,026,668	8,255,917	6,629,031	266,549	1,066	Dr 446,706	Dr 701,862	210,703	0.38
Delaware & Hudson	835.24	129,010,109	2,906,264	1,256,957	132,473,330	22,866,928	20,512,281	1,074,790	417	Cr 232,487	Dr 155,042	1,361,885	1.03
Delaware, Lackawanna & Western	992.12	316,462,150	1,915,910	2,704,693	321,082,753	44,722,233	36,968,499	3,805,005	13,839	Dr 488,030	Cr 137,748	3,587,608	1.12
Detroit & Mackinac	242.08	7,433,666	181,227	200,605	7,815,498	654,506	548,624	15,248	62	Dr 24,024	Dr 1,005	63,543	0.81
Detroit & Toledo Shore Line	50.24	8,947,898	73,895	818,342	9,840,135	3,554,326	1,591,027	323,121	157	Dr 433,233	Dr 170,128	1,037,662	10.55
Detroit, Toledo & Ironton	472.31	44,637,315	439,647	2,715,705	47,792,667	8,103,503	3,428,762	696,011	797	Dr 488,003	Dr 23,671	3,257,259	6.82
Elgin, Joliet & Eastern	440.11	59,795,701	730,922	1,129,163	61,655,786	14,203,429	10,123,781	1,135,238	658	Cr 1,192	Dr 74,586	2,970,356	4.66
Erie (Incl.Chgo.& Erie)	2,303.50	558,847,173	3,485,553	6,546,174	568,878,900	75,126,702	54,793,414	3,978,079	32,114	Dr 3,291,974	Dr 70,395	12,960,726	2.28
Grand Trunk Western	1,006.66	107,837,004	1,558,434	747,026	110,142,464	21,015,134	16,662,411	901,470	16,673	Dr 972,566	Dr 423,520	2,037,494	1.85
Illinois Terminal Co.	524.99	57,250,819	317,210	984,533	58,552,562	5,312,789	3,565,711	328,330	50	Dr 238,734	Cr 39,957	1,219,921	2.08
Lehigh & Hudson River	96.60	6,563,524	78,208	150,966	6,792,698	1,433,251	1,013,309	133,422	1	Dr 91,347	Dr 62,376	192,796	2.84
Lehigh & New England	220.19	21,478,084	339,635	563,657	22,381,376	3,432,725	2,593,600	83,391	192	Dr 176,866	Dr 112,003	822,797	3.68
Lehigh Valley	1,348.49	264,223,994	2,695,281	3,349,540	270,268,815	40,641,557	31,967,410	2,114,496	19,689	Dr 1,286,233	Dr 271,072	4,982,747	1.84
Long Island	396.74	140,372,044	819,986	453,050	141,645,080	23,806,411	18,431,359	2,751,458	11,585	Dr 474,457	Dr 1,596,865	540,687	0.38
Missouri-Illinois	206.26	6,986,684	99,034	162,214	7,247,932	1,063,296	846,280	45,066	11	Dr 108,062	Dr 5,755	51,122	0.71
Monongahela	174.56	29,387,572	207,618	420,774	30,015,964	3,844,803	1,544,612	192,970	5	Dr 961,041	Dr 31,804	1,114,371	3.71
Montour	57.35	9,774,440	147,343	223,803	10,145,586	1,988,377	1,166,448	185,599	7	Dr 208,785	Dr 210	844,898	8.33
New Jersey & New York	45.72	3,849,045	5,745	69,958	3,924,748	765,868	805,332	49,659	251	Dr 135,071	Dr 77,411	Def 421,856	Def
New York Central	11,214.92	2,079,176,925	24,504,103	23,467,303	2,127,148,331	310,136,980	237,197,455	20,619,432	162,208	Dr 11,676,501	Dr 3,788,860	36,748,524	1.73
New York, Chicago & St.Louis	1,692.32	231,553,333	1,112,039	2,632,842	235,298,214	34,249,513	23,107,185	1,334,324	8,063	Dr 2,574,692	Dr 459,703	6,759,546	2.87
New York, Ontario & Western	566.65	97,637,262	713,123	302,492	98,652,877	8,590,513	6,389,755	397,636	453	Dr 352,859	Dr 89,250	1,360,560	1.38
New York, Susquehanna & Western	215.33	44,395,484	34,670	363,417	44,793,571	3,529,468	2,528,254	257,157	1,856	Dr 418,038	Cr 29,814	356,977	0.80
Pennsylvania	10,465.08	2,561,296,795	25,731,623	47,479,774	2,634,508,192	367,812,186	263,100,184	25,234,425	150,321	Dr 3,031,896	Dr 1,900,719	70,394,641	2.67
Penna.-Reading Seashore Lines	413.23	44,133,974	150,227	607,001	44,891,202	5,636,966	5,459,868	909,950	346	Dr 777,901	Dr 236,465	Def 1,697,564	Def
Pere Marquette	2,127.12	164,906,886	1,352,819	2,490,382	168,750,087	28,478,062	21,137,287	1,209,306	8,076	Dr 772,131	Dr 524,085	4,828,197	2.86
Pittsburgh & Lake Erie	233.83	115,619,537	1,550,803	3,191,037	120,361,377	16,945,794	13,658,184	1,131,720	123,462	Cr 1,721,757	Cr 2,214	3,762,399	3.13
Pittsburg & Shawmut	109.79	13,091,951	103,583	57,815	13,253,349	564,425	550,836	2,546	36	Cr 28,504	Dr 472	39,039	0.29
Pittsburgh & West Virginia	138.25	57,839,810	154,563	217,514	58,211,887	3,001,245	2,040,279	231,285	290	Cr 328,860	Dr 23,063	1,033,188	1.77
Pittsburg, Shawmut & Northern	190.57	25,012,602	98,347	10,325	25,121,274	896,683	830,695	27,481	-	Dr 48,043	Dr 7,384	Def 12,920	Def
Reading Company	1,459.70	444,302,570	5,098,547	3,711,849	453,112,966	51,373,733	35,752,145	3,586,475	13,825	Cr 454,620	Cr 86,452	12,562,360	2.77
Staten Island Rapid Transit	22.54	15,070,236	116,630	287,888	15,474,754	1,504,047	1,569,531	206,762	58	Dr 248,331	Cr 13,024	Def 507,611	Def
Wabash	2,447.01	296,322,665	1,917,241	3,608,051	301,847,957	41,492,889	31,246,552	1,511,319	14,831	Dr 1,976,355	Dr 1,529,933	5,213,899	1.73
Western Maryland	883.07	166,620,908	1,394,523	2,627,392	170,642,823	14,791,403	10,205,419	785,664	548	Cr 374,706	Dr 66,801	4,107,677	2.41
Wheeling & Lake Erie	511.60	93,054,570	1,064,119	2,423,326	96,542,015	13,497,874	9,901,688	976,417	423	Cr 71,336	Dr 24,108	2,670,574	2.77
TOTAL - Other Eastern Dist. Roads	51,669.15	9,664,871,775	92,140,386	133,563,655	9,890,580,816	1,388,428,601	1,029,880,120	90,029,037	627,547	Dr 35,889,257	Dr 15,025,651	216,976,989	2.19
GRAND TOTAL - Eastern District	58,779.55	10,586,833,634	105,795,555	142,511,781	10,835,140,970	1,536,014,373	1,140,102,420	98,789,905	655,973	Dr 40,920,306	Dr 20,422,844	235,122,925	2.17

a Does not include $21,747,767 net investment for improvements to owned and leased lines charged off through income or expenses prior to July 1, 1907.

NOTE - The figures of "Investment in Road and Equipment" represent the investment shown by carriers' books, including the investment of leased lines, etc., the earnings from which are included in "Net Railway Operating Income".

PROPERTY INVESTMENT AND CONDENSED OPERATING INCOME ACCOUNT

CLASS 1 ROADS OF THE EASTERN DISTRICT

CALENDAR YEAR ENDED DECEMBER 31, 1936

Road	Average miles of road operated	Property investment at end of year				Total operating revenues	Total operating expenses	Railway tax accruals	Equipment rents - net balance	Joint facility rents - net balance	Net railway operating income	
		Investment in railway property used in transportation service	Material & supplies (Acct.716)	Cash (Acct.708)	Total						Amount	Rate of return on total investment
NEW ENGLAND ROADS:												
Bangor & Aroostook	603.83	$ 35,001,812	$ 810,138	$ 508,519	$ 36,320,469	$ 5,985,120	$ 3,987,773	$ 559,237	Cr $ 3,507	Dr $ 8,308	$ 1,433,309	3.96%
Boston & Maine	1,990.15	275,548,379	4,191,940	5,108,908	284,849,227	46,518,159	36,003,613	3,336,095	Dr 2,225,317	Dr 99,947	4,853,187	1.70
Canadian National Lines in New England	172.21	12,016,558	262,197	-	12,278,755	1,356,327	1,536,174	162,597	Dr 318,972	Cr 1,346	Def 660,070	Def
Canadian Pacific (lines in Maine)	233.73	9,798,013	-	-	9,798,013	2,177,509	1,989,246	108,744	Dr 808,349	Dr 30,759	Def 159,589	Def
Canadian Pacific (lines in Vermont)	88.40	3,782,701	-	-	3,782,701	1,029,544	1,317,431	60,096	Dr 222,731	Dr 3,573	Def 574,287	Def
Central Vermont	454.31	31,424,140	466,295	267,797	32,158,232	5,905,876	5,554,949	237,930	Dr 84,841	Dr 222,124	Def 194,268	Def
Maine Central	1,043.06	64,216,512	1,258,983	1,072,776	66,548,271	12,222,116	9,261,713	784,372	Dr 340,783	Dr 377,371	1,467,937	2.21
New York Connecting	20.50	27,344,288	-	668,386	28,012,671	2,830,931	637,586	420,055	Dr 78,196	Dr 307,322	1,387,772	4.95
New York, New Haven & Hartford	2,045.25	432,587,793	5,027,384	7,061,941	444,677,118	78,867,149	58,414,779	5,569,233	Dr 2,357,245	Dr 4,469,592	8,036,300	1.81
Rutland	407.29	26,736,215	298,870	286,763	27,321,848	3,465,869	3,141,741	223,040	Dr 29,335	Cr 27,751	99,504	0.36
TOTAL - New England Roads	7,068.72	918,456,406	12,325,807	14,968,090	945,747,306	160,358,300	121,836,005	11,461,399	Dr 5,862,202	Dr 5,509,899	15,889,795	1.68
OTHER EASTERN DISTRICT ROADS:												
Akron, Canton & Youngstown	171.31	12,990,863	100,836	920,021	14,011,820	2,264,738	1,410,705	181,729	Dr 219,184	Cr 30	483,150	3.45
Ann Arbor	293.86	21,515,366	261,833	544,947	22,322,146	3,962,735	3,178,969	208,744	Dr 222,780	Cr 75,969	428,221	1.92
Baltimore & Ohio	6,485.19	996,965,838	8,906,840	10,278,768	1,016,151,546	168,992,681	123,600,333	10,222,322	Dr 3,035,707	Dr 1,949,014	30,185,306	2.97
Bessemer & Lake Erie	225.51	69,406,856	758,245	1,353,509	71,518,610	15,467,348	7,593,566	1,603,180	Cr 576,328	Dr 8,608	6,838,320	9.56
Cambria & Indiana	37.65	8,749,856	54,299	568,541	9,372,698	1,292,050	971,225	316,249	Cr 832,314	Cr 1,200	838,090	8.94
Central R.R. of New Jersey	681.20	184,219,176	1,638,258	5,708,615	191,566,049	31,799,356	23,608,786	4,976,123	Dr 1,594,910	Dr 55,533	1,564,004	0.82
Chicago & Eastern Illinois	931.32	74,590,521	910,896	1,213,553	76,714,970	16,109,107	11,751,140	960,000	Dr 923,333	Dr 816,333	1,658,301	2.16
Chicago & Illinois Midland	131.64	12,095,141	262,314	649,001	13,006,456	3,805,454	2,350,504	282,664	Cr 82,341	Dr 66,649	1,168,008	8.98
Chicago, Indianapolis & Louisville	572.35	51,367,574	779,093	811,795	52,958,462	10,403,598	8,150,421	514,818	Dr 485,073	Dr 753,246	500,440	0.94
Delaware & Hudson	831.03	127,255,259	2,200,231	2,194,127	131,648,327	25,359,955	20,602,480	1,655,735	Cr 216,066	Dr 154,223	3,163,583	2.40
Delaware, Lackawanna & Western	987.13	a 314,358,846	1,694,149	3,915,478	a 319,968,473	49,728,116	39,184,541	4,016,990	Dr 307,298	Cr 143,231	6,362,518	1.99
Detroit & Mackinac	242.08	7,296,869	187,093	294,998	7,777,960	803,484	605,306	21,118	Dr 45,009	Dr 1,309	130,742	1.68
Detroit & Toledo Shore Line	50.24	8,914,812	106,650	931,188	9,952,650	3,967,609	1,755,642	397,944	Dr 505,040	Dr 177,446	1,131,537	11.37
Detroit, Toledo & Ironton	472.31	44,485,633	412,230	3,048,939	47,946,802	7,852,226	3,850,348	742,829	Dr 441,583	Dr 24,742	2,791,754	5.82
Elgin, Joliet & Eastern	434.14	59,249,743	1,020,775	1,909,566	62,180,084	19,119,317	13,118,928	1,333,391	Dr 514,823	Dr 72,071	4,080,304	6.56
Erie (Incl. Chgo. & Erie)	2,296.43	556,610,517	3,504,293	9,140,480	569,255,290	85,006,111	58,862,551	6,114,339	Dr 3,486,922	Dr 182,498	16,338,791	2.87
Grand Trunk Western	1,027.13	119,019,888	1,578,154	1,511,068	122,109,110	23,892,910	18,241,776	1,275,479	Dr 1,275,799	Dr 429,803	2,670,053	2.19
Illinois Terminal Co.	510.06	57,758,179	439,832	845,054	59,043,065	5,998,627	3,780,354	467,613	Dr 283,568	Cr 44,876	1,531,940	2.59
Lehigh & Hudson River	96.60	6,466,609	82,318	176,925	6,725,852	1,566,898	1,077,216	157,316	Dr 88,435	Dr 56,396	187,533	2.79
Lehigh & New England	219.07	21,759,753	378,639	789,236	22,927,628	3,962,591	2,933,614	227,032	Cr 129,315	Dr 123,947	807,313	3.52
Lehigh Valley	1,332.10	262,430,954	2,527,244	4,268,927	269,227,125	49,156,379	35,247,646	3,071,076	Dr 1,910,329	Dr 226,370	8,700,958	3.23
Long Island	396.74	141,392,176	936,433	740,828	143,069,437	25,525,378	19,616,193	3,139,196	Dr 361,211	Dr 1,611,328	797,450	0.56
Missouri-Illinois	208.53	6,856,082	116,651	265,037	7,237,770	1,178,415	877,899	62,431	Dr 128,947	Dr 5,773	103,365	1.43
Monongahela	172.72	29,255,699	166,197	437,184	29,859,070	4,716,390	1,822,049	441,628	Dr 960,623	Dr 31,492	1,470,538	4.92
Montour	57.16	9,779,735	132,189	167,188	10,079,112	2,347,041	1,337,914	256,948	Dr 203,089	Dr 1,759	963,449	9.46
New Jersey & New York	45.72	3,875,498	2,816	78,537	3,956,851	785,849	865,469	79,436	Dr 124,349	Dr 82,779	Def 346,184	Def
New York Central	11,218.81	2,037,345,569	25,642,047	24,156,023	2,087,143,629	361,063,872	288,830,436	30,812,037	Dr 12,424,247	Dr 3,718,525	45,278,627	2.17
New York, Chicago & St. Louis	1,704.76	233,555,544	1,443,106	7,557,011	242,555,661	41,712,961	28,637,173	2,599,763	Dr 2,852,916	Dr 486,376	9,137,723	3.77
New York, Ontario & Western	576.99	97,928,474	651,014	156,228	98,735,716	8,705,934	6,583,844	570,741	Dr 431,864	Dr 78,818	51,040,637	1.06
New York, Susquehanna & Western	218.12	44,290,855	27,791	288,221	44,606,867	3,451,369	2,440,634	358,084	Dr 357,481	Cr 37,456	333,216	0.75
Pennsylvania	10,379.82	2,569,630,719	30,754,758	58,066,120	2,658,441,597	441,425,189	314,087,701	34,714,149	Dr 5,589,161	Dr 2,583,585	84,180,593	3.17
Penna.-Reading Seashore Lines	412.71	39,398,126	176,573	1,061,024	40,635,723	6,488,041	5,538,810	1,026,927	Dr 914,943	Dr 240,840	Def1,232,479	Def
Pere Marquette	2,115.56	165,310,616	1,659,221	3,821,762	170,791,599	32,459,080	23,515,961	2,014,947	Dr 690,066	Dr 659,757	5,578,349	3.27
Pittsburgh & Lake Erie	233.83	121,735,347	2,134,894	5,175,468	129,045,409	22,204,490	17,206,608	2,127,418	Cr 1,990,719	Cr 33,004	4,896,227	3.79
Pittsburg & Shawmut	102.96	12,822,406	99,072	41,185	12,962,662	577,692	566,131	17,675	Cr 24,217	Dr 472	17,701	0.14
Pittsburgh & West Virginia	138.25	c7,690,125	248,518	417,547	58,356,190	3,856,901	2,692,239	297,840	Cr 422,986	Dr 24,437	1,265,311	2.17
Pittsburg, Shawmut & Northern	190.49	24,707,509	100,175	8,420	24,816,104	1,084,860	902,636	34,935	Dr 70,629	Dr 8,442	68,208	0.27
Reading Company	1,456.52	440,342,679	4,823,252	8,676,377	453,842,308	59,291,758	40,618,205	5,316,789	Cr 564,384	Dr 76,383	13,944,785	3.07
Staten Island Rapid Transit	23.54	19,676,736	98,999	317,158	20,092,893	1,613,638	1,621,150	259,956	Dr 103,620	Cr 18,817	Def 352,281	Def
Wabash	2,447.11	290,516,425	2,251,593	4,399,713	297,167,731	46,428,282	34,334,112	2,363,589	Dr 1,866,963	Dr 1,716,376	8,147,522	2.07
Western Maryland	882.92	165,801,903	1,508,250	2,111,906	- 169,422,058	16,298,271	10,464,047	1,198,429	Cr 312,043	Dr 163,622	4,784,216	2.82
Wheeling & Lake Erie	512.57	94,710,590	972,499	2,364,299	98,047,388	15,574,200	10,892,349	1,562,034	Cr 665,023	Dr 33,208	3,751,632	3.83
TOTAL - Other Eastern Dist. Roads	51,521.20	9,623,125,657	101,760,170	171,370,971	9,896,246,798	1,627,299,881	1,173,226,601	127,970,623	Dr 36,477,600	Dr 16,246,579	273,378,478	2.76
GRAND TOTAL - Eastern District	58,576.92	10,541,582,063	114,075,977	186,336,061	10,841,994,103	1,787,658,181	1,295,061,606	139,432,022	Dr 42,339,802	Dr 21,756,478	289,068,273	2.67

a Does not include $21,747,787 net investment for improvements on owned or leased lines charged off through income or expenses prior to July 1, 1907.

PROPERTY INVESTMENT AND CONDENSED OPERATING INCOME ACCOUNT

CLASS I ROADS OF THE EASTERN DISTRICT

CALENDAR YEAR ENDED DECEMBER 31, 1937.

ROAD	Average Miles of Road Operated	Property Investment at End of Year				Total Operating Revenues	Total Operating Expenses	Railway Tax Accruals	Equipment Rents - Net Balance	Joint Facility Rents - Net Balance	Net Railway Operating Income	
		Investment in Railway Property used in Transportation Service	Material & Supplies (Acct.716)	Cash (Acct.708)	Total						Amount	Rate of Return on Total Investment
NEW ENGLAND ROADS:												
Bangor & Aroostook	603.83	$35,719,853	$916,482	$420,801	$37,057,136	$6,185,676	$4,100,561	$547,705	Dr $17,517	Dr $8,242	$1,511,651	4.08%
Boston & Maine	1,960.71	276,236,075	3,975,608	1,696,911	281,908,594	46,372,693	34,614,104	2,854,121	Dr 2,222,591	Dr 133,008	6,548,869	2.32
Canadian National Lines in New England	172.21	12,100,277	384,874	-	12,485,151	1,439,135	1,492,762	151,309	Dr 359,096	Cr 1,342	Def 562,690	Def
Canadian Pacific (Lines in Maine)	233.73	9,867,727	-	-	9,867,727	2,414,810	2,026,587	105,443	Dr 198,248	Dr 35,121	49,411	0.50
Canadian Pacific (Lines in Vermont)	35.40	3,800,678	-	-	3,800,678	1,135,119	1,268,380	53,256	Dr 248,880	Dr 1,044	Def 436,441	Def
Central Vermont	455.59	31,215,055	640,562	221,865	32,077,482	6,243,723	5,437,626	238,077	Dr 224,709	Dr 223,639	119,672	0.37
Maine Central	1,009.83	62,752,126	1,281,651	857,157	64,890,934	12,499,154	9,173,104	711,091	Dr 234,071	Dr 295,785	2,085,103	3.21
New York Connecting	20.50	27,360,168	-	732,728	28,092,896	2,497,952	646,789	449,848	Dr 69,617	Dr 188,750	1,142,948	4.07
New York, New Haven & Hartford	2,033.15	427,889,651	6,231,789	4,261,714	438,183,154	81,142,587	63,703,268	5,734,060	Dr 2,412,566	Dr 4,701,303	4,591,390	1.05
Rutland	407.29	26,731,297	410,531	166,241	27,308,069	3,483,634	3,261,559	313,864	Dr 5,802	Cr 27,303	Def 70,088	Def
TOTAL - New England Roads	6,962.24	913,472,907	13,941,497	8,358,417	935,672,821	163,414,483	125,724,740	11,158,774	Dr 5,992,897	Dr 5,558,247	14,979,825	1.60
OTHER EASTERN DISTRICT ROADS:												
Akron, Canton & Youngstown	171.31	13,146,725	108,413	785,398	14,040,536	2,122,096	1,459,389	105,470	Dr 249,983	Dr 729	306,525	2.18
Ann Arbor	293.86	21,106,704	331,037	455,210	21,892,951	3,920,393	3,238,940	226,527	Dr 203,875	Cr 43,014	294,065	1.34
Baltimore & Ohio	6,460.65	995,264,910	12,297,325	6,746,736	1,014,308,971	169,436,436	128,859,516	10,918,554	Dr 2,628,943	Dr 2,120,798	24,908,625	2.46
Bessemer & Lake Erie	225.35	78,401,545	746,413	917,477	80,065,435	17,585,189	8,498,798	2,021,408	Cr 621,837	Dr 6,162	7,680,668	9.59
Cambria & Indiana	37.65	9,998,040	56,622	571,262	10,525,924	1,299,529	795,958	407,626	Cr 822,440	Cr 1,213	919,598	8.74
Central R.R. of New Jersey	682.73	182,209,060	1,874,860	1,847,529	185,931,449	32,577,715	23,927,577	4,624,525	Dr 1,813,927	Dr 83,921	2,147,765	1.16
Chicago & Eastern Illinois	930.30	75,874,391	1,222,656	1,330,290	78,427,337	16,382,400	12,530,803	895,000	Dr 877,471	Dr 742,144	1,336,582	1.70
Chicago & Illinois Midland	131.55	12,970,066	330,645	323,568	13,624,279	3,904,687	2,699,630	276,402	Cr 11,276	Dr 69,888	870,043	6.39
Chicago, Indianapolis & Louisville	575.51	51,453,896	1,098,985	602,720	53,155,601	10,057,076	8,643,966	398,812	Dr 521,828	Dr 611,557	Def 119,087	Def
Delaware & Hudson	830.49	127,268,780	2,696,343	998,758	130,965,881	25,219,828	20,863,093	1,433,626	Cr 20,045	Dr 127,956	2,815,198	2.15
Delaware, Lackawanna & Western	965.63	314,322,192	2,251,168	2,348,011	318,921,371	50,175,004	39,279,811	5,061,295	Dr 340,276	Cr 135,280	5,628,902	1.76
Detroit & Mac[illegible]	242.08	7,144,511	179,271	73,721	7,397,503	885,445	694,644	35,135	Dr 62,799	Dr 1,326	91,441	1.24
Detroit & Toledo Shore Line	50.24	9,186,319	106,772	610,976	9,904,067	3,815,007	1,730,586	382,710	Dr 446,662	Dr 178,847	1,076,002	10.86
Detroit, Toledo & Ironton	472.31	47,150,964	559,263	1,879,125	49,589,348	7,507,246	3,967,462	594,702	Dr 569,341	Dr 27,629	2,348,112	4.74
Elgin, Joliet & Eastern	434.78	62,320,572	1,049,505	834,514	64,204,589	21,340,188	14,919,847	1,408,686	Dr 1,212,667	Dr 75,717	3,723,271	5.80
Erie (Incl.Chgo.& Erie)	2,280.04	557,582,579	3,862,520	4,812,318	566,257,417	83,925,726	60,997,804	5,516,560	Dr 3,865,054	Cr 67,720	13,614,008	2.40
Grand Trunk Western	1,027.13	119,068,619	2,077,564	709,864	121,856,047	24,307,098	19,034,579	1,107,288	Dr 1,432,953	Dr 308,526	2,423,752	1.99
Illinois Terminal Co.	502.44	54,767,699	455,401	297,206	55,520,306	6,196,308	4,006,592	484,199	Dr 352,189	Cr 45,129	1,398,457	2.52
Lehigh & Hudson River	96.60	6,396,890	118,016	155,696	6,666,602	1,650,949	1,149,118	151,771	Dr 78,620	Dr 66,516	204,924	3.07
Lehigh & New England	215.15	21,926,331	400,074	704,355	23,030,760	3,689,201	2,835,402	162,241	Cr 175,960	Dr 113,281	754,237	3.27
Lehigh Valley	1,318.56	256,028,243	3,325,277	2,342,668	263,696,888	48,618,849	37,179,197	2,701,704	Dr 2,384,294	Dr 108,200	6,245,454	2.37
Long Island	396.79	142,826,379	1,392,023	602,250	144,627,652	24,586,449	19,822,530	3,049,645	Dr 333,928	Dr 1,556,599	Def 176,253	Def
Missouri-Illinois	199.29	6,761,393	196,089	187,650	7,145,132	1,476,178	1,023,774	72,624	Dr 160,071	Dr 4,344	195,365	2.72
Monongahela	171.90	29,262,562	207,940	476,081	29,946,583	4,468,539	1,837,111	365,616	Dr 975,420	Dr 33,060	1,197,132	4.00
Montour	56.18	10,871,316	140,871	169,482	11,181,669	2,464,868	1,427,461	330,894	Cr 331,121	Dr 861	1,036,773	9.27
New Jersey & New York	45.72	3,877,863	3,376	36,736	3,917,975	741,406	835,891	75,162	Dr 113,441	Dr 63,216	Def 346,304	Def
New York Central	11,079.52	2,077,071,783	30,527,219	18,712,701	2,126,311,703	366,226,128	284,000,439	32,160,527	Dr 10,722,638	Dr 3,314,055	36,028,267	1.69
New York, Chicago & St.Louis	1,704.73	237,180,780	1,848,383	6,429,854	245,459,017	41,612,266	28,395,482	2,364,229	Dr 2,742,486	Dr 449,505	7,660,564	3.12
New York, Ontario & Western	576.99	97,387,290	623,727	172,515	98,183,532	6,480,050	5,799,171	447,420	Dr 326,257	Dr 81,998	Def 174,816	Def
New York, Susquehanna & Western	143.27	37,932,027	49,907	416,742	38,398,676	3,234,936	2,162,687	347,605	Dr 383,871	Cr 27,524	368,297	0.96
Pennsylvania	10,312.16	2,600,754,121	40,545,957	39,231,303	2,680,531,381	455,933,509	337,961,298	39,332,751	Dr 3,697,545	Dr 1,940,994	73,000,926	2.72
Penna.-Reading Seashore Lines	412.28	38,796,955	239,327	215,679	39,250,961	6,304,613	5,858,947	1,011,062	Dr 920,175	Dr 247,992	Def 1,733,363	Def
Pere Marquette	2,116.44	167,635,338	1,737,317	2,967,181	172,339,836	32,229,110	24,929,785	1,644,506	Dr 608,882	Dr 594,792	4,461,045	2.59
Pittsburgh & Lake Erie	233.83	124,065,016	2,727,464	2,190,566	129,093,046	23,069,704	19,281,083	1,918,097	Cr 2,282,979	Cr 4,327	4,137,830	3.21
Pittsburg & Shawmut	100.70	12,800,886	135,097	45,337	12,981,322	654,962	649,505	13,121	Cr 29,916	Dr 477	21,775	0.17
Pittsburgh & West Virginia	136.32	58,054,857	508,177	118,688	58,681,722	4,092,692	3,165,133	249,273	Cr 458,057	Dr 25,347	1,110,996	1.89
Pittsburg, Shawmut & Northern	190.44	24,665,103	96,191	3,105	24,764,399	1,022,230	886,189	61,066	Dr 76,856	Dr 7,625	Def 9,506	Def
Reading Company	1,452.39	441,066,967	5,781,500	2,250,367	449,098,834	56,754,351	41,467,934	4,116,320	Cr 653,982	Cr 32,776	13,956,835	3.09
Staten Island Rapid Transit	23.54	20,093,249	87,069	244,418	20,424,736	1,560,605	1,577,071	311,757	Dr 87,516	Cr 14,859	Def 400,880	Def
Wabash	2,436.86	293,539,267	2,851,855	2,967,356	299,378,480	46,133,734	35,829,683	2,453,482	Dr 1,933,814	Dr 1,668,898	4,247,857	1.42
Western Maryland	880.95	167,892,591	1,814,012	1,682,293	171,388,896	17,626,270	11,578,422	1,307,371	Cr 257,783	Dr 157,430	4,840,822	2.82
Wheeling & Lake Erie	512.68	95,396,334	1,143,843	1,239,129	97,781,306	15,970,839	11,172,293	1,761,899	Cr 1,166,412	Cr 9,763	4,222,222	4.32
TOTAL - Other Eastern Dist. Roads	51,146.37	9,713,241,806	127,812,472	109,517,837	9,950,572,114	1,649,289,987	1,237,0[illegible]4,586	132,298,688	Dr 33,333,194	Dr 14,379,393	232,214,126	2.33
GRAND TOTAL - Eastern District	58,127.61	10,626,714,712	141,653,969	117,876,254	10,886,244,935	1,812,574,470	1,362,759,326	143,457,462	Dr 39,326,091	Dr 19,937,640	247,193,951	2.27

Source: Annual reports of carriers to the Interstate Commerce Commission.

EXHIBIT No. 43

PROPERTY INVESTMENT AND CONDENSED OPERATING INCOME ACCOUNT

FOR ROADS SHOWN BELOW

CALENDAR YEAR ENDED DECEMBER 31, 1932.

ROAD	Average miles of road operated	Property investment at end of year: Investment in road and equipment	Property investment at end of year: Material & supplies (Acct.716)	Property investment at end of year: Cash (Acct.708)	Property investment at end of year: Total	Total operating revenues	Total operating expenses	Railway tax accruals	Uncollectible railway revenues	Equipment rents - net balance	Joint facility rents - net balance	Net railway operating income: Amount	Net railway operating income: Rate of return on total investment
Baltimore & Ohio	6,397.82	$ 999,089,672	$ 13,437,327	$ 8,688,798	$1,021,215,797	$ 125,882,823	$ 91,654,935	$ 8,905,019	$ 50,536	Dr $ 1,883,257	Dr $ 1,415,678	$ 21,973,398	2.15%
Central R.R.of New Jersey	692.13	201,683,652	1,966,542	1,783,902	205,434,096	30,557,469	22,182,692	4,857,581	9,939	Dr 689,472	Dr 120,487	2,507,298	1.22
Delaware, Lackawanna & Western	998.42	332,887,874	1,951,914	3,468,492	338,108,280	46,447,856	37,055,579	5,216,791	4,907	Dr 291,380	Cr 133,355	4,011,954	1.19
Erie	2,046.47	528,517,208	3,172,734	5,794,914	537,484,856	64,841,762	50,031,273	4,370,391	19,078	Dr 2,237,005	Cr 479,523	8,663,538	1.61
Lehigh Valley	1,362.05	271,897,132	2,446,423	3,096,280	277,439,835	38,739,138	31,686,181	2,670,831	4,920	Dr 795,352	Dr 370,986	3,210,368	1.16
New Jersey & New York	45.72	3,788,599	7,034	120,585	3,896,218	1,103,750	1,089,763	60,108	1,058	Dr 98,421	Dr 140,651	Def 263,251	Def
New York Central (Inc. U.& D.)	11,449.06	2,131,358,099	29,386,058	22,655,245	2,183,398,399	293,682,480	227,232,871	30,099,958	90,672	Dr 11,282,912	Dr 4,190,678	20,786,389	0.96
New York, Ontario & Weste	568.51	97,561,766	852,209	319,904	98,723,879	10,571,876	7,522,187	547,395	881	Dr 554,405	Dr 66,776	1,860,232	1.88
New York, Susquehanna & Western	131.52	39,285,556	72,033	721,774	40,079,362	3,522,186	2,505,745	358,817	2,370	Dr 187,548	Cr 7,545	476,251	1.19
Pennsylvania	10,892.46	2,550,367,268	26,413,934	31,140,799	2,607,922,001	331,393,458	242,011,603	28,231,430	75,227	Dr 10,620,693	Dr 1,322,477	49,132,038	1.88
TOTAL	34,564.16	7,156,206,625	79,705,205	77,790,693	7,313,702,523	946,542,798	712,952,829	85,318,321	259,588	Dr 29,638,545	Dr 7,017,300	112,356,215	1.54
	CALENDAR YEAR ENDED DECEMBER 31, 1933.												
Baltimore & Ohio	6,401.78	987,243,034	10,081,093	6,674,117	1,003,998,244	131,792,253	90,369,700	8,156,726	32,854	Dr 2,819,768	Dr 1,564,004	28,849,201	2.87
Central R.R.of New Jersey	691.81	199,268,336	1,756,889	2,561,948	203,583,173	27,401,329	19,648,591	4,500,328	3,406	Dr 910,133	Dr 84,503	2,253,768	1.11
Delaware, Lackawanna & Western	998.42	331,565,509	1,828,073	4,212,062	337,605,644	43,339,279	34,777,127	4,715,877	9,233	Dr 489,167	Cr 133,215	3,480,300	1.03
Erie	2,046.43	526,035,292	3,414,980	6,611,540	536,061,812	63,156,702	46,575,076	3,631,957	34,096	Dr 1,815,151	Cr 456,133	11,656,455	2.17
Lehigh Valley	1,358.59	268,083,005	2,927,696	2,240,589	273,251,292	38,177,450	30,222,067	2,343,371	7,112	Dr 1,079,151	Dr 407,680	4,107,569	1.50
New Jersey & New York	45.72	3,824,758	4,580	91,260	3,920,598	939,120	1,010,186	47,940	70	Dr 95,022	Dr 120,259	Def 334,357	Def
New York Central	11,413.82	2,117,484,465	30,902,263	20,682,205	2,169,068,933	283,341,102	207,923,294	26,456,637	173,396	Dr 11,592,638	Dr 3,925,975	33,269,162	1.53
New York, Ontario & Western	568.49	97,817,238	814,931	257,861	98,890,030	9,644,523	6,978,679	438,578	1,140	Dr 440,020	Dr 77,294	1,708,812	1.73
New York Susquehanna & Western	131.52	39,165,867	49,583	506,844	39,722,294	3,160,853	2,362,861	275,164	1,181	Dr 164,754	Cr 12,828	369,721	0.93
Pennsylvania	10,693.29	2,527,495,734	26,437,952	19,167,337	2,573,101,023	324,715,814	226,768,347	24,459,600	120,451	Dr 9,634,386	Dr 1,758,171	61,976,859	2.41
TOTAL	34,349.87	7,097,983,238	78,220,042	63,005,763	7,239,209,043	925,668,425	666,645,928	74,926,178	382,939	Dr 29,042,180	Dr 7,333,710	147,337,490	2.04
	CALENDAR YEAR ENDED DECEMBER 31, 1934.												
Baltimore & Ohio	6,399.76	981,388,267	9,116,687	8,080,418	998,585,372	135,539,395	93,337,784	7,908,009	54,886	Dr 2,744,405	Dr 1,816,482	23,677,939	2.37
Central R.R.of New Jersey	689.73	194,624,233	1,956,885	3,765,566	200,345,684	29,022,116	20,247,793	4,546,868	21,062	Dr 1,030,172	Dr 116,389	3,060,752	1.53
Delaware, Lackawanna & Western	992.65	a 317,568,790	2,060,175	3,131,389	a 322,760,354	44,592,530	35,506,791	4,292,970	13,109	Dr 412,093	Cr 136,613	4,504,190	1.40
Erie (Incl.Chgo.& Erie)	2,310.73	571,826,403	3,872,849	5,437,772	581,197,324	75,064,122	54,311,372	3,951,598	17,767	Dr 4,012,667	Dr 70,886	12,699,832	2.19
Lehigh Valley	1,353.75	269,426,357	2,566,755	2,599,053	274,592,165	39,866,526	30,921,805	2,005,986	4,164	Dr 1,280,181	Dr 315,299	5,338,991	1.94
New Jersey & New York	45.72	3,856,137	3,034	58,700	3,916,871	828,269	1,021,112	48,447	752	Dr 93,221	Dr 100,968	Def 436,831	Def
New York Central	11,399.06	2,095,946,198	27,283,199	19,867,569	2,143,096,966	295,084,881	224,171,760	24,836,981	178,056	Dr 11,980,673	Dr 4,756,483	29,160,928	1.37
New York, Ontario & Western	567.11	97,966,904	1,037,590	125,221	99,129,715	9,389,831	7,088,040	437,341	3,836	Dr 525,793	Dr 82,743	1,252,078	1.26
New York, Susquehanna & Western	215.32	45,502,921	71,832	325,648	45,900,401	3,606,680	2,748,994	261,775	2,739	Dr 287,683	Cr 37,717	343,186	0.75
Pennsylvania	10,484.55	2,559,345,966	27,375,791	22,562,147	2,609,283,904	343,668,699	248,786,108	23,731,426	135,996	Dr 8,174,734	Dr 1,523,689	61,317,016	2.35
TOTAL	34,458.36	7,128,051,176	75,843,797	69,013,483	7,269,308,456	976,663,029	724,141,559	72,020,451	432,157	Dr 30,542,232	Dr 8,608,589	140,918,071	1.94
	CALENDAR YEAR ENDED DECEMBER 31, 1935.												
Baltimore & Ohio	6,440.80	2,008,741,911	7,606,614	7,658,758	1,024,006,283	141,873,643	105,464,140	7,232,736	30,3	Dr 2,790,634	Dr 2,066,897	24,298,956	2.37
Central R.R.of New Jersey	684.10	186,565,267	1,502,208	4,535,618	192,602,993	29,522,639	21,462,672	4,431,878	8,181	Dr 1,330,602	Dr 97,215	2,192,693	1.14
Delaware, Lackawanna & Western	992.12	a 316,462,160	1,915,910	2,704,693	a 321,082,753	44,722,233	36,968,499	3,805,005	13,839	Dr 485,030	Cr 137,748	3,587,608	1.12
Erie (Incl.Chgo.& Erie)	2,303.50	558,847,173	3,485,553	6,546,174	568,878,900	75,126,702	54,793,414	3,978,079	32,114	Dr 3,291,974	Dr 70,395	12,960,726	2.28
Lehigh Valley	1,348.49	264,223,894	2,696,281	3,349,640	270,269,815	40,641,557	31,967,410	2,114,406	19,689	Dr 1,286,233	Dr 271,072	4,982,747	1.84
New Jersey & New York	45.72	3,849,045	5,745	69,958	3,924,748	765,868	925,332	49,659	251	Dr 135,071	Dr 77,411	Def 421,856	Def
New York Central	11,214.92	2,079,176,925	24,504,100	23,467,303	2,127,148,331	310,192,980	237,197,455	20,619,432	162,208	Dr 11,676,501	Dr 3,788,860	36,748,524	1.73
New York, Ontario & Western	568.66	097,837,262	713,123	302,492	98,852,877	8,590,513	6,389,755	397,636	453	Dr 352,669	Dr 89,250	1,360,560	1.38
New York, Susquehanna & Western	215.32	44,396,484	34,670	363,417	44,793,571	3,529,468	2,528,254	257,157	1,856	Dr 415,038	Cr 29,814	356,977	0.80
Pennsylvania	10,465.68	2,561,296,796	25,731,622	47,479,774	2,634,508,192	367,812,186	263,100,184	25,234,425	150,321	Dr 7,031,896	Dr 1,900,719	70,394,641	2.67
TOTAL	34,276.71	7,121,196,006	68,195,830	96,477,627	7,285,867,463	1,122,777,789	760,797,115	68,120,411	419,292	Dr 28,786,138	Dr 8,184,257	156,461,578	2.15

a Does not include $21,747,787 net investment for improvements to owned and Leased lines charged off through income or expenses prior to July 1, 1907.

NOTE: The figures of "Investment in road and equipment" represent the investment shown by carriers' books, including the investment of leased lines, etc., the earnings from which are included in "Net railway operating income".

SOURCE: Carriers reports to the Interstate Commerce Commission

CALENDAR YEAR ENDED DECEMBER 31, 1936

ROAD	Average miles of road operated	Property investment at end of year: Investment in railway property used in transportation service	Property investment at end of year: Material & supplies (Acct.716)	Property investment at end of year: Cash (Acct.708)	Property investment at end of year: Total	Total operating revenues	Total operating expenses	Railway tax accruals	Equipment rents - net balance	Joint facility rents - net balance	Net railway operating income: Amount	Net railway operating income: Rate of return of total investment
timore & Ohio	6,485.19	$ 995,965,838	$ 8,906,940	$ 10,278,768	$ 1,015,151,546	$ 168,992,681	$ 123,600,333	$ 10,222,322	Dr 3,035,707	Dr 1,949,014	$ 30,185,305	2.97%
tral R.R.of New Jersey	681.20	184,219,176	1,638,258	5,706,615	191,566,049	31,759,356	23,608,786	4,976,123	Dr 1,594,910	Dr 55,533	1,534,004	0.82
aware, Lackawanna & Western	987.13	a 314,358,846	1,694,149	3,915,478	a 319,968,473	49,728,116	39,184,541	4,016,990	Dr 307,298	Cr 143,231	6,362,518	1.99
e (Incl.Chgo.& Erie)	2,296.43	556,610,517	3,504,293	9,140,480	569,255,290	85,005,111	58,882,551	6,114,339	Dr 3,486,932	Dr 182,498	16,338,791	2.87
gh Valley	1,332.10	262,430,954	2,527,244	4,268,927	269,227,125	49,156,379	35,247,646	3,071,076	Dr 1,910,329	Dr 226,370	8,700,958	3.23
Jersey & New York	45.72	3,875,498	2,816	78,537	3,956,851	786,849	865,469	79,436	Dr 124,349	Dr 62,779	Def 346,184	Def
York Central	11,218.81	2,037,345,559	25,642,047	24,156,023	2,087,143,629	361,063,872	268,830,436	30,812,037	Dr 12,424,247	Dr 3,718,525	45,278,627	2.17
York, Ontario & Western	576.99	97,928,474	651,014	156,228	98,735,716	8,705,934	6,583,844	570,741	Dr 431,894	Dr 78,818	1,040,637	1.05
York, Susquehanna & Western	218.12	44,290,855	27,791	288,221	44,606,867	3,451,959	2,440,634	358,084	Dr 257,481	Cr 87,456	333,216	0.75
nsylvania	10,379.82	2,569,639,719	30,754,758	58,056,120	2,658,441,597	441,425,189	314,087,701	34,714,149	Dr 5,859,161	Dr 2,563,685	84,186,893	3.17
TAL	34,221.51	7,066,656,436	76,349,310	116,047,397	7,258,053,143	1,200,114,446	873,331,941	94,935,297	29,832,308	8,676,436	193,638,465	2.67

CALENDAR YEAR ENDED DECEMBER 31, 1937

timore & Ohio	6,460.65	995,264,910	12,297,325	6,746,736	1,014,308,971	169,436,436	128,859,516	10,918,554	Dr 2,628,943	Dr 2,120,798	24,908,625	2.46
tral R.R.of New Jersey	682.73	182,209,060	1,974,860	1,847,529	186,931,449	32,577,715	23,927,577	4,624,525	Dr 1,115,927	Dr 63,921	2,147,765	1.16
aware, Lackawanna & Western	985.63	314,322,192	2,168	2,348,011	316,921,371	50,175,004	39,279,811	5,081,295	Dr 340,276	Cr 135,280	5,628,902	1.76
e (Incl.Chgo.& Erie)	2,280.04	557,582,579	3,862,520	4,812,318	566,257,417	83,925,726	60,997,804	5,516,580	Dr 3,865,054	Cr 67,720	13,614,008	2.40
gh Valley	1,318.58	259,028,943	3,325,277	2,342,668	263,696,888	48,018,849	37,179,197	2,701,704	Dr 2,394,294	Dr 108,200	6,245,454	2.37
Jersey & New York	45.72	3,877,863	3,376	36,736	3,917,975	741,406	835,891	75,162	Dr 113,441	Dr 63,216	Def 346,304	Def
York Central	11,079.52	2,077,071,783	30,527,219	18,712,701	2,126,311,703	366,226,126	284,000,439	32,160,527	Dr 10,722,838	Dr 3,314,055	36,028,267	1.69
York, Ontario & Western	576.99	97,387,290	623,727	172,515	98,183,532	6,480,030	5,799,171	447,420	Dr 226,257	Dr 81,998	Def 174,816	Def
York, Susquehanna & Western	143.27	37,932,027	49,907	416,742	38,398,676	3,234,936	2,162,887	347,605	Dr 383,871	Cr 27,524	368,297	0.96
nsylvania	10,312.16	2,600,754,121	40,545,957	39,231,303	2,680,531,381	455,933,509	337,961,293	39,332,751	Dr 3,697,545	Dr 1,940,854	73,000,926	2.72
TAL	33,805.29	7,124,430	95,361,336	78,667,259	7,296,458,363	1,217,349,737	921,003,386	101,186,123	26,276,446	7,462,656	161,421,124	2.21

a Does not include $21,747,767 net investment for improvements on owned or leased lines charged off through income or expenses prior to July 1, 1907.

Source: Annual reports of carriers to the Interstate Commerce Commission.

NET INCOME (OR DEFICIT) AFTER FIXED CHARGES - EASTERN DISTRICT

RAILWAYS OF CLASS I - CALENDAR YEARS 1932 TO 1937

ROAD	Net income (or deficit) after fixed charges					
	1932	1933	1934	1935	1936	1937
Akron, Canton & Youngstown	$57 598	$118 327	$116 437	$244 022	$908 589	$89 466
Ann Arbor	411 763	226 032	52 288	54 002	25 493	151 142
Baltimore & Ohio b	6 334 978	204 772	3 825 752	3 180 909	4 538 975	720 695
Bangor & Aroostook	701 493	993 576	947 394	873,753	747 251	845 224
Bessemer & Lake Erie	1 920 293	1 373 623	390 410	2 003 496	5 507 161	6 361 588
Boston & Maine	800 660	321 571	293 492	206 764	1 654 183	202 220
Cambria & Indiana a	819 128	926 517	583 402	749 166	788 690	844 043
Canadian National Lines in New England c	89 619	27 739	96 857	30 710	705	15 354
Canadian Pacific (lines in Maine)	209	-	62 237	1 203	-	-
Canadian Pacific (lines in Vermont)		-	-	-	-	-
Central R.R. of New Jersey	1 828 083	2 309 738	1 536 070	2 346 738	2 983 240	2 682 386
Central Vermont	944 053	875 468	1 068 192	789 656	1 460 272	1 141 908
Chicago & Eastern Illinois	3 411 419	2 020 504	1 494 200	1 470 247	335 390	715 824
Chicago & Illinois Midland	434 578	321 224	143 276	179 635	655 792	529 908
Chicago, Indianapolis & Louisville	1 594 813	1 514 487	1 416 314	1 314 465	932 194	1 549 682
Delaware & Hudson	4 477 591	3 699 772	2 601 063	2 774 977	926 695	998 165
Delaware, Lackawanna & Western	2 542 447	2 993 862	1 972 613	2 932 305	132 847	936 772
Detroit & Mackinac	16 193	75 012	14 344	53 160	12 017	14 250
Detroit & Toledo Shore Line	271 319	503 599	623 564	930 665	1 021 118	970 963
Detroit, Toledo & Ironton	299 498	342 361	1 137 789	2 501 481	2 053 599	1 573 035
Elgin, Joliet & Eastern	2 441 907	532 148	389 059	1 119 480	1 649 512	1 498 921
Erie R.R. (Incl. Chgo. & Erie)	3 142 997	531 529	601 034	852 400	2 195 014	433 293
Grand Trunk Western	3 404 179	3 366 678	1 639 964	291 787	411 122	863 852
Illinois Terminal	679 956	260 853	395 906	241 298	7 386	44 079
Lehigh & Hudson River	181 593	214 941	184 337	223 814	223 492	243 498
Lehigh & New England	432 041	300 338	362 578	433 709	397 860	382 944
Lehigh Valley	3 933 043	2 775 833	1 891 141	1 843 801	1 323 825	898 553
Long Island	2 999 648	2 243 258	329 452	1 407 841	1 156 061	2 115 812
Maine Central	416 125	19 285	35 251	134 541	82 615	473 547
Missouri-Illinois	131 139	103 046	71 481	86 258	31 861	59 012
Monongahela	311 629	318 331	233 203	399 688	832 745	568 173
Montour	673 451	729 808	759 130	811 459	886 218	947 923
New Jersey & New York	309 128	380 729	485 900	468 938	395 489	394 523
New York Central System d	16 916 077	2 847 264	4 761 173	3 360 420	13 524 424	10 392 142
New York, Chicago & St.Louis	4 410 434	1 205 636	58 634	1 115 929	7 380 482	2 655 561
New York Connecting	181 746	11 875	4 996	21 320	90 256	165 799
New York, New Haven & Hartford	393 047	4 853 852	5 532 114	3 560 469	3 580 044	7 713 451
New York, Ontario & Western	777 593	372 583	78 420	3 586	330 843	1 675 286
New York, Susquehanna & Western	242 476	416 881	385 038	379 343	400 732	434 284
Pennsylvania R.R.	13 573 536	19 281 169	18 815 694	23 849 798	38 742 092	27 278 638
Pennsylvania-Reading Seashore Lines e	-	1 999 642	2 812 839	2 623 045	2 152 695	2 651 350
Pere Marquette	3 044 611	1 599 471	616 127	1 633 298	2 758 004	1 669 858
Pittsburg & Shawmut	180 486	144 613	7 183	51 638	12 295	56 430
Pittsburgh & West Virginia	433 530	106 106	92 270	95 500	376 957	638 540
Pittsburg, Shawmut & Northern	751 603	614 691	758 235	720 058	640 463	717 649
Reading Company	3 559 189	6 715 523	5 682 054	5 714 173	6 515 071	6 839 345
Rutland	41 460	70 328	375 102	482 982	241 375	408 609
Wabash	6 673 695	4 823 058	3 107 621	2 268 468	1 280 782	3 081 791
Western Maryland	612 893	936 051	995 255	1 002 657	1 710 113	1 803 137
Wheeling & Lake Erie	435 084	1 065 050	1 197 549	2 162 113	3 744 279	3 735 467
Total - Eastern District	47 647 142	2 153 388	5 044 552	19 673 959	78 700 754	40 771 080

RAILWAYS OF CLASS I LISTED BELOW

ROAD	Net income (or deficit) after fixed charges					
	1932	1933	1934	1935	1936	1937
Baltimore & Ohio b	$6 534 978	$204 772	$3 825 752	$3 180 909	$4 538 975	$720 695
Central R.R. of New Jersey	1 828 083	2 309 738	1 536 070	2 346 738	2 983 240	2 082 386
Delaware, Lackawanna & Western	2 542 447	2 993 862	1 972 613	2 932 305	132 847	936 772
Erie R.R. (Incl. Chgo. & Erie)	3 142 997	531 529	601 034	852 400	2 195 014	433 293
Lehigh Valley	3 933.043	2 775 933	1 891 141	1 843 801	1 323 825	898 553
New Jersey & New York	309 128	380 729	485 900	468 938	395 489	394 523
New York Central System d	16 916 077	2 847 264	4 761 173	3 360 420	13 524 424	10 392 142
New York, Ontario & Western	777 593	372 585	78 420	3 586	350 845	1 675 286
New York, Susquehanna & Western	242 476	416 881	385 038	379 343	400 732	434 284
Pennsylvania R.R.	13 573 536	19 281 169	18 815 694	23 849 793	38 742 092	27 278 638
Total - 10 Roads	$20,898,100	8,665,746	3,278,553	15,209,370	56,081,179	30,094,988

a Class II carrier prior to 1932.
b Includes Buffalo & Susquehanna; Buffalo, Rochester & Pittsburgh; and Staten Island Rapid Transit.
c Formerly the Atlantic & St.Lawrence.
d Includes Cincinnati Northern; Cleveland, Cincinnati, Chicago & St.Louis; Evansville, Indianapolis & Terre Haute; Michigan Central; Pittsburgh & Lake Erie; and the Ulster & Delaware.
e The Pennsylvania-Reading Seashore Lines represent a consolidation of the operations of the Atlantic City R.R. and West Jersey & Seashore R.R., effective from June 25, 1933. Data for West Jersey & Seashore prior to June 25,1933 included with Pennsylvania R.R., and data for Atlantic City R.R. prior to 1933 included with Reading Company.

File W-243-38

PRO. 1106

EXHIBIT No. 45

NET INCOME (OR DEFICIT) AFTER FIXED CHARGES

Railways of Class I - First seven months of 1938

EASTERN DISTRICT

ROAD	Net income or deficit first seven months, 1938	ROAD	Net income or deficit first seven months, 1938
EASTERN DISTRICT		EASTERN DISTRICT: (CONT'D)	
Akron, Canton & Youngstown	$76 461	Lehigh & New England	$154 880
Ann Arbor	290 255	Lehigh Valley	2 446 037
Baltimore & Ohio a	12 241 526	Long Island	1 203 544
Bangor & Aroostook	437 256	Maine Central	326 538
Bessemer & Lake Erie	867 998	Missouri-Illinois	81 820
Boston & Maine	2 785 369	Monongahela	32 502
Cambria & Indiana	341 463	Montour	223 022
Canadian National Lines in New England	732 265	New Jersey & New York	200 103
Canadian Pacific (lines in Maine)	-	New York Central System b	19 243 983
Canadian Pacific (lines in Vermont)	-	New York, Chicago & St.Louis	2 003 779
Central R.R. of New Jersey	2 234 311	New York Connecting	314 642
Central Vermont	1 114 246	New York, New Haven & Hartford	7 649 849
Chicago & Eastern Illinois	1 333 830	New York, Ontario & Western	1 190 431
Chicago & Illinois Midland	133 813	New York, Susquehanna & Western	299 223
Chicago, Indianapolis & Louisville	1 319 086	Pennsylvania R.R.	2 622 633
Delaware & Hudson	927 380	Pennsylvania-Reading Seashore Lines	1 911 926
Delaware, Lackawanna & Western	2 833 596	Pere Marquette	2 551 202
Detroit & Mackinac	53 717	Pittsburg & Shawmut	318 496
Detroit & Toledo Shore Line	43 156	Pittsburgh & West Virginia	201 204
Detroit, Toledo & Ironton	73 710	Pittsburg, Shawmut & Northern	90 858
Elgin, Joliet & Eastern	616 140	Reading Company	429 284
Erie R.R. (Incl. Chgo. & Erie)	8 332 326	Rutland	621 383
Grand Trunk Western	3 600 481	Wabash	4 557 487
Illinois Terminal	63 268	Western Maryland	232 756
Lehigh & Hudson River	56 473	Wheeling & Lake Erie	525 986
		Total - Eastern District	$85,103,008

RAILWAYS OF CLASS 1 LISTED BELOW

ROAD	Net income or deficit first seven months, 1938	ROAD	Net income or deficit first seven months, 1938
Baltimore & Ohio a	$12 241 526	New Jersey & New York	$ 200 103
Central R.R. of New Jersey	2 234 311	New York Central System b	19 243 983
Delaware, Lackawanna & Western	2 833 596	New York, Ontario & Western	1 190 431
Erie R.R. (Incl. Chgo. & Erie)	8 332 326	New York, Susquehanna & Western	299 223
Lehigh Valley	2 446 037	Pennsylvania R.R.	2 622 633
		Total - 10 Roads	$51 644 169

a Includes Staten Island Rapid Transit.

b Includes Pittsburgh & Lake Erie.

PRO. 1107

683

1093

[fol. 684] EXHIBIT No. 46

Witness E. A. Hodkinson

Erie Railroad Company, C. E. Denney and John A. Hadden, Trustees

Chicago and Erie Railroad Co., Legal Department

October 12, 1938.

E-21083

Hoboken Manufacturers Railroad Company v. Railroads, I. C. C. Docket No. 27630

Parker McCollester, Esq., % Lord, Day & Lord, 25 Broadway, New York, N. Y.

DEAR MR. MCCOLLESTER:

In the above entitled proceeding complainant's Exhibit No. 7, entitled "Switching Costs for 1936 and 1937 of Hoboken Manufacturers Railroad Company" shows that in 1936 the Hoboken handled a total of 14,961 cars and 15,799 cars in 1937. The defendants desire to know for each of the years how many cars included in the total moved in connection with Seatrain Lines.

In complainant's Exhibit No. 24, the average haul per ton of trunk lines on traffic interchanged with Seatrain vessels is shown as 258 miles. In this connection, we should like to have a break down to show separately the average haul per ton of the shipments northbound (westbound) and southbound (eastbound).

The defendants are unable to make a segregation of the above mentioned figures from any records in their possession and I feel sure that the information is readily available from complainants's working papers used in the preparation of Exhibits 7 and 24. I shall be greatly obliged if you will supply me with the information requested prior to the next hearing on October 20th, but if that is not practicable, on the day of the hearing.

Yours very truly, W. T. Pierson, General Attorney.

Copy to: Examiner E. J. Hoy.

[fol. 685] Lord, Day and Lord, 25 Broadway, New York, Sunard Building

October 13, 1938.

W. T. Pierson, Esq., General Attorney, Erie Railroad Company, Midland Building, Cleveland, Ohio

Hoboken Manufacturers Railroad v. Railroads, I. C. C. Docket No. 27630

Dear Mr. Pierson:

I have your letter of October 12th requesting certain details in connection with the figures shown in complainant's Exhibits Nos. 7 and 24. I am having the figures that you asked for worked up and will furnish them to you as soon as possible. I hope that we will get them to you in advance of the hearing.

Very truly yours, (Sgd.) Parker McCollester.

PMcC/WEL.

c/c E. J. Hoy, Esq., Examiner, Interstate Commerce Commission, Washington, D. C.

[fol. 686] Lord, Day and Lord, 25 Broadway, New York, Cunard Building

October 17, 1938.

W. T. Pierson, Esq., General Attorney, Erie Railroad Company, Midland Building, Cleveland, Ohio

Re: Hoboken Manufacturers Railroad Co. v. A. C. & Y. Ry. Co. et al., Docket No. 27630

Dear Mr. Pierson:

Referring further to your letter of October 12th requesting advice as to the number of cars included in the totals shown in Exhibit No. 7 which moved in connection with Seatrain Lines, I have been furnished with the following break down of the total figures, which will give you the information you asked for:

	1936	1937
Seatrain Trunk Line Carload Traffic	6517	6611
Seatrain Local Carload Traffic	2710	2634
Seatrain L. C. L.	443	388
All other Traffic	5291	6166
Total	14961	15799

The Seatrain local carload traffic above referred to consists of shipments originating or terminating on the Hoboken Manufacturers Railroad and introduced by it with Seatrain. In other words, shipments of Seatrain Freight which have not been interchanged with the Trunk Lines.

Answering your further inquiry, I am informed that the average haul per ton of the Trunk Lines on traffic interchanged with Seatrain on shipments northbound (westbound) was 128 miles and on shipments southbound (eastbound) the average haul of the Trunk Lines was 348 miles.

Very truly yours, (Sgd.) Parker McCollester.

MMcC/WEL.

c/c E. J. Hoy, Esq., Examiner, Interstate Commerce Commission, Washington, D. C.

[fol. 687] EXHIBIT "47"

(Copy).

Lord, Day & Lord

25 Broadway, New York

October 16, 1938.

Thomas P. Healy, Esq., General Solicitor, New York Central Railroad Co., 466 Lexington Avenue, New York, N. Y.

Hoboken Manufacturers R. R. v. Akron, Canton & Youngstown Ry. Co. et al., Docket #27630

DEAR TOM:

In response to your request of September 29th, I enclose a statement of cars of Seatrain freight interchanged by the Hoboken Manufacturers Railroad with the Trunk Lines where loading or unloading of the shipments or portions thereof was performed by the Hoboken. This is not a complete list of such cars but is intended to be typical.

With respect to the westbound cars, the memorandum indicates the reasons for the loading or unloading. As to the eastbound cars, the reasons are not shown on the memo-

randum, but I quote the following from an explanation furnished me by Mr. Brush:

"With respect to the eastbound cars for 1937, you will find no explanation as to the reasons for transfer on the report. I have already testified as to the reasons for transfer of flour. As to the reason for transfer of the other cars on this report: PRR 348069 was transferred because it exceeded the clearance limits shown in Seatrain's tariffs. As to the private cars, namely WFEX, BREX and FGEX, these cars were furnished by the originating rail carriers (in no case the Hoboken) contrary to the instructions of the owners. In 1932 the owners notified Seatrain that they would not permit their cars to be handled by Seatrain, but also advised that if Seatrain did handle their cars that compensation several times in excess of the allowances shown in Seatrain's tariffs, and which allowances were accepted by many other car lines and private owners, must be paid by Seatrain. Seatrain to protect itself put a clause in its tariffs providing that any additional compensation to private car owners over and above the regular allowance shown in Seatrain's tariffs would have to be paid by the shipper. This was done because at times Seatrain was confronted with the problem of having a car of perishables arrive just prior to sailing time, or possibly in extreme cold weather where it would be impossible to transfer the load without material expense and risk, and in those cases Seatrain took the cars of these ownerships and paid the owners the allowances as shown in Seatrain's tariffs, advising the owners that they must look to the originating rail carrier for any extra compensation by reasons of their instructions that their cars should not be used to go forward via Seatrain, or to the shipper as provided in Seatrain's tariffs. In spite of these precautions cars of these owners have continued to be loaded by various rail lines contrary to all instructions, and where it has been possible without material expense or risk to trans- [fol. 688] fer the cars this has been done, and Hoboken, therefore, claims that the rail lines should pay the allowance of $1.35 because these cars were unloaded, which would not have been necessary if the Trunk Lines had furnished a permitted car to begin with or called upon us to furnish one. I do not see how the Trunk

Lines, under these circumstances, can support any claim that Hoboken was not entitled to the allowance of $1.35 per ton.

With respect to cars W&LE 71547 and UP 176166, containing steel and paper respectively, our records do not indicate clearly the reason for transfer but we assume, because of many other experiences, that these cars were unloaded to consolidate with shipments in cars NYC 300560 and GN 39391 respectively. It is Hoboken's position that shippers and consignees have a right to bring in two cars with minimum loads and have them consolidated in one car, because we believe that the shippers and consignees under the Trunk Line tariffs have a right to demand that the cars be unloaded; and if they exercise that right, then they can demand of Seatrain that one car be loaded, and Seatrain, if it is to provide service in railroad cars, would be obligated to load the products. Therefore, it is Hoboken's position that when a shipper wishes consolidation that it must unload one car and charge the Trunk Lines $1.35 per ton in accordance with the agreed allowances, thereby saving the unloading of the second car for the Trunk Lines."

Very truly yours, Parker McCollester.

PMc/WEI.

Enclosure.

Copy to E. J. Hoy, Esq., Examiner, Interstate Commerce ommission, Washington, D. C.

—18.

. 689] Westbound Cars 1937

During the year 1937 a total of 507 cars from Seatrain Lines were interchanged Trunk Line Carriers which required handling of the cargo before the cars ld be released for forwarding by rail.

ummary of these cars is:

Tomatoes	59 cars	
Pineapples	169 cars	
Sisal	50 cars	
Candy	1 cars	
Sugar	180 cars	Miscellaneous orders for shippers
Sugar	12 cars	Raw sugar complete cars
Sugar	36 cars	Refined complete cars
Total	507 cars	

Westbound Cars 1937—Continued

Tomatoes—59 cars:

A part of each of these cars has to be unloaded to permit weighing and sampling by the U. S. Customs and inspection by the Federal Horticulture Board. After release, these cases were reloaded in the cars and secured and stripped in place to allow the cars to move forward.

The following are some of these cars:

Jan.	5	ART	17393	from Cuba to Portland, Me. via Erie
Jan.	5	ART	15828	from Cuba to Pittsburgh, Pa. via P RR
Feb.	2	ART	17144	from Cuba to Ottawa, Can. via N. Y. C.
Jan.	19	ART	21004	from Cuba to Boston, Mass. via Erie

Pineapples—169 cars:

A part of each of these cars has to be unloaded to permit weighing and sampling by the U. S. Customs and inspection by the Federal Horticulture Board. After release these cases were reloaded in the cars and secured and stripped in place to allow the cars to move forward.

The following are some of these cars:

May	4	ART	15393	from Cuba to Allentown, Pa. via CNJ
May	4	ART	20214	from Cuba to Montreal, Can. via NYC
May	4	ART	20507	from Cuba to Toronto, Can. via Erie
May	4	ART	19632	from Cuba to Philadelphia, Pa. via P RR
May	4	ART	19175	from Cuba to Chatham, Can. via L V

Sisal—50 cars:

On instructions from the shippers these cars were to be weighed by Public Weighers before being forwarded by rail.

(Here follows one paster, side folios 690-692)

[fol. 690]

After unloaded and weighed these cars had to be reloaded to move forward.

The following are some of these cars:

Jan.	11	MILW	714438	Ex Car	PENN	80923	from Cuba to Auburn, N. Y. via NYC
Jan.	11	UP	73753	Ex Car	B&O	277226	from Cuba to Auburn, N. Y. via NYC
Feb.	11	PM	90724	Ex Car	NYC	52847	from Cuba to Brantford, Can. via Erie
Feb.	11	PENN	57270	Ex Car	NKP	21008	from Cuba to Brantford, Can. via Erie
Mar.	3	NYC	93497	Ex Car	B&O	187206	from Cuba to Jersey City, N. J. via CRR of NJ.
July	15	MILW	203388	Ex Car	NYC	78953	from Cuba to Auburn, N. Y. via NYC.

Candy—1 Car:

This car was unloaded for weighing and sampling by the U. S. Customs and then reloaded for forwarding:

Dec.	3	WP	18475	Ex Car	PRR	121047	from Cuba to Bloomfield, N. J. via Erie.

Sugar—180 Cars—Miscellaneous Orders from Shippers

This sugar was received from Seatrain Lines in cars loaded from 800 to 1200 bags per car consigned to various sugar brokers. Those brokers ordered the sugar forwarded in different lots and to different destinations and required complete loading of each shipment from one or more of the lots as received from Seatrain Lines.

The following are some of these cars:

Jan.	16	MILW	791960	Ex Car	PRR	98583	from Cuba to Albany, N. Y. 400 bags via NYC.
Mar.	27	B&O	265474	Ex Car	B&O	265474	
				and	PRR	563274	from Cuba to Binghamton, N. Y. 500 bags via DL&W
April	12	IC	155288	Ex Car	PRR	57339	from Cuba to Buffalo, N. Y. 600 bags via Erie
April	14	PRR	124884	Ex Car	PRR	91701	from Cuba to Wilkes-Barre, Pa. 400 bags via LV
May	4	NYC	82964	Ex Car	MP	94071	from Cuba to Buffalo, N. Y. 400 bags via Erie
May	6	NYC	119147	Ex Car	RI	152374	from Cuba to Orville, Ohio. 500 bags via PRR
June	5	B-4	40321	Ex Car	B-4	41464	from Cuba to Warren, Pa. 400 bags via NYC.

[fol. 691]

Sugar—12 cars—Raw Sugar 100% Weight and Sampling:

This raw sugar is 100% weighing and sampling by the U. S. Customs and has to be unloaded for this work. After completion the sugar has to be reloaded to be forwarded by rail.

The following are some of these cars:

Feb.	25	PENN.	79067	Ex Car	D&H	17594	from Cuba to Wheeling, W. Va. via PRR.
	25	NYC	109380	Ex Car	MP	94344	from Cuba to Warwood, W. Va. via P RR.
Nov	10	NF	9587	Ex Car	MLC	5111	from Cuba to Paulding, Ohio via DLW.
	10	P RR.	42079	Ex Car	CP.	240631	from Cuba to Paulding, Ohio via DLW.

Sugar—36 Cars—10% Weight and Sample:

Sugar—36 Cars—10% Weight and Sample:

This sugar was forwarded by rail in same cars as received from Seatrain Lines, but before being passed by U. S. Customs 10% of bag of each car had to be weighed and sampled by them, which required unloading them. After these bags were passed they had to be reloaded back into the cars.

The following are some of these cars:

Feb. 6	PRR.	502887	from Cuba to Cleveland, Ohio via Erie
Feb. 19	Erie	76066	from Cuba to Detroit, Mich. via NYC.
Feb. 19	SAL	16076	from Cuba to Detroit, Mich via NYC.
Mar. 10	MP	31258	from Cuba to Newark, N. J. via CNJ.
Mar. 16	LV	60001	from Cuba to Newark, N. J. via CNJ.
Aug. 12	PRR.	503108	from Cuba to Springfield, Mass. via NYC.

[fol. 692]

Eastbound Cars 1937

Durning 1937 the following eastbound cars from the Trunk Line Carriers for Seatrain Lines were transferred:

Jan. 11	MP	91158	Ex Car	PENN	348069	Steel from Wylie, Pa. via DLW for Cuba
Jan. 21	ART.	13809	Ex Car	WFEX	65107	Apples from Winchester, Ohio via CNJ for Cuba
Mar. 15	ART	15647	Ex Car	WFEX	62817	Tom. Juice from Houston, Del. via PRR for Cuba
Mar. 9	NYC	300560	Ex Car	WLE	71547	Steel from Youngstown, Ohio via ERIE for Cuba
Sept. 1	GM	39391	Ex Car	UP	176166	Paper from Baldswinsville, Mass. via ERIE for Cuba
Sept. 27	ART	21106	Ex Car	BREX	76424	Cranberries from Plymouth, Mass. via ERIE for New Orleans
Sept. 29	ART	18680	Ex Car	FGEX	32872	Cranberries from Tremont, Mass. via ERIE for NO
Sept. 29	ART	22790	Ex Car	WFEX	62153	Cranberries from Tremont, Mass. via ERIE for NO
Oct. 4	MDT	155923	Ex Car	WFEX	49698	Apples from Berrysville, W. Va. via CNJ for Cuba
Oct. 11	ART	19062	Ex Car	FGEX	45379	Cranberries from Tremont, Mass. via ERIE for NO

FLOUR: During 1938 shippers of flour to Cuba have instructed that the cars be transferred before going forward on Seatrain Lines' vessels

The following are some of these cars:

1938

Sept. 11	ATSF	138056	Ex Car	DLW	45451	Flour from Buffalo, N. Y. via ERIE to Cuba
Sept. 24	SAL	18728	Ex Car	LV	5016	Flour from Geneva, N. Y. via NYC to Cuba
Sept. 24	T&P	40156	Ex Car	DLW	48414	Flour from Buffalo, N. Y. via PRR to Cuba
Sept. 27	NYC	93790	Ex Car	D&H	17700	Flour from Buffalo, N. Y. via PRR to Cuba
Sept. 27	T&P	40280	Ex Car	NYC	93790	Flour from Buffalo, N. Y. via PRR to Cuba
Oct. 2	MP	30806	Ex Car	CP	242786	Flour from Buffalo, N. Y. via LV to Cuba

[fol. 693] EXHIBIT "48"

Schedule of Taxes Paid by the Hoboken Manufacturers Railroad Company for Year 1937 on Property Leased from the Hoboken Railroad Warehouse & Steamship Connecting Company and the Hoboken Land & Improvement Co.

	Valuation	Rate per $100.00	Tax
H. R. R. W. & S. S. Conn. Co.			
Franchise	$1,000.00	4.222	$42.22
Main Stem	374,105.00	4.222	15,794.71
*Shed—Last assessment prior to building of present steel shed after fire	5,538.00	5.672	314.12
*Old Holland America Platform—Assessment prior to rebuilding of present platform after fire	840.00	5.672	47.64
*Freight House—80% of 1906 Inventory value. Additions made since 1906	980.00	5.672	55.59
*Electric Locomotives retired—1930 Assessment prior to assessment on new Diesel Electric Locomotives	12,910.00	4.222	545.06
			24,387.51
H. R. R. W. & S. S. Conn. Co.			
Plot "C"	28,064.00	5.672	1,591.79
Hoboken Land & Improvement Co.			
Plot "A"—Land	100,398.00	5.672	5,694.57
Motor House	20,000.00	5.672	1,134.40
			6,828.97
*Plot "B"—Land	146,205.00	5.672	8,292.75
Trestle—80% of the Agreed Value of 1906 in accordance with lease (rebuilt after fire)	20,000.00	5.672	1,134.40
			9,427.15
	Total		$42,235.42

* The original properties leased have been rebuilt on account of fire, improved, added to or retired. For example, Diesel Electric Locomotives were substituted for the original electric locomotives. The rentals under the leases were based on the original properties leased and in order to make a proper comparison with taxes on such properties at the present time, it has been necessary to determine the values of the properties prior to the making of additions, retirements, etc. and apply the present tax rate to such values.

[fol. 694] EXHIBIT "49"

1937 Rentals Paid to Landlords by Hoboken Manufacturers Railroad Company and Taxes Paid on Same Property for Same Year

Lessor		Base Rentals*	Taxes
Hoboken Railroad Warehouse & Steamship Connecting Company	Railroad	$21,500.00	$24,387.51
Hoboken Railroad Warehouse & Steamship Connecting Company	Plot "C"	1,408.00	1,591.79
Hoboken Land & Improvement Co.	Plot "A"	8,025.00	6,828.97
Hoboken Land & Improvement Co.	Plot "B"	9,741.50	9,427.15
Before excess tonnage rental (See note below)		$40,674.50	$42,235.42

*In addition to base rentals the lease from the Hoboken Railroad Warehouse & Steamship Connecting Company provides for payments on a sliding scale varying from 7¢ per ton to 1.5¢ per ton on tonnage handled by the railroad in excess of 314,286 tons per annum. As a result of this provision excess tonnage rentals for the calendar year 1937 amounted to $6,339.92.

[fol. 695] EXHIBIT "50"

Letter Head New York Central System

466 Lexington Avenue, New York

October 29, 1938.

Hoboken Manufacturers R. R. Co. v. Railroads

I. C. C. Docket No. 27630

E. J. Hoy, Esq., Examiner, Interstate Commerce Commission, Washington, D. C.

DEAR MR. HOY:

In accordance with understanding at the close of the hearing in the above entitled proceeding, I am sending you herewith three copies of Rule 235A containing Supplement No. 90 to West Shore Tariff I. C. C. W. S. No. 6902. The Ontario & Western Railroad Tariff No. I. C. C. 10012 contains a similar provision. I find that the tariffs of the other New York carriers do not contain similar provisions, but they do contain rules under which the class and commodity rates published by the respective carriers at their stations in New York are applicable to and from stations at Hoboken, N. J., on the Hoboken Manufacturers Railroad. Rule S-14 of Lehigh Valley Tariff I. C. C. No. C-8750 is typical.

In addition, the same tariffs usually carry rules with respect to loading and unloading of lighterage-free freight, of

which the following rule of the same Lehigh Valley tariff is typical. Rule AA-C reads as follows:

"On import, export, intercoastal or coastwise traffic * * * rates to or from New York including free lighterage, on articles entitled to free lighterage will include loading or unloading of lighters, barges or cars on car-floats in lieu of lighterage at place of receipt or delivery by the Lehigh Valley Railroad, except as otherwise provided in this tariff."

Yours very truly, (Signed) T. P. Healy.

Copies to:

Mr. W. J. Mathey, Vice President, Hoboken Manufacturers R. R. Co., 39 Broadway, New York, N. Y.

Mr. W. T. Pierson, A. G. S., Erie Railroad, Midland Building, Cleveland, Ohio.

Mr. J. F. Eshelman, A. G. S., Pennsylvania R. R., Philadelphia, Pa.

Mr. E. H. Burgess, G. S., Lehigh Valley R. R., 143 Liberty St., New York, N. Y.

Mr. E. A. Hodkinson, 143 Liberty Street, New York, N. Y.

Mr. P. F. Gault, Room 1422, 400 West Madison St., Chicago, Ill.

Mr. F. R. Cross, A. G. S., Baltimore & Ohio R. R., Baltimore, Md.

[fol. 696] Page 37 of Tariff and 8 of Sup. No. 60 and 2 of Sup. 84. Change: Hoboken Manufacturers' Railroad Company.

Hoboken, N. J. Way-bill to *Weehawken, N. J.* Notation should be made upon regular and card way-bills: "Hoboken Manufacturers' R. R. Delivery."

The Hoboken Manufacturers' Railroad Co., connects with the West Shore R. R. at Willow Avenue, West Hoboken, N. J., and reaches industries and steamship lines named below.

By means of this connection, import or export freight, C. L. (except grain or other freight in bulk, or heavy machinery, etc., weighing over 4,480 pounds per piece), can be handled direct from or to cars or steamers and thereby avoid re-handling involved in transfer at Weehawken from or to steamships by lighter or car float.

Bulk freight, including lumber, will not be accepted unless cars are loaded by shippers or unloaded by consignees.

Machinery and other heavy freight, weighing in excess of 4,480 pounds per single piece or package, will only be received when consignor or consignee loads or unloads cars.

Class Rates

On traffic to or from Hoboken, N. J., Hoboken Manufacturers Railroad, class rates published to or from New York City (including lighterage), New York, N. Y., or Brooklyn, N. Y., stations of this Company will apply, except where specific class rates to or from Hoboken, N. J., Hoboken Manufacturers Railroad, are in effect, the latter will apply.

Commodity Rates

On traffic to or from Hoboken, N. J., Hoboken Manufacturers Railroad, commodity rates published to or from New York City (including lighterage), New York, N. Y., or Brooklyn, N. Y., stations of this Company will apply, except where specific commodity rates to or from Hoboken, N. J., Hoboken Manufacturers Railroad, are in effect, the latter will apply.

Less carload freight. Delivery station adjacent to steamship piers.

Team tracks for receiving and delivering freight, in carloads, are located at Fifth and Fifteenth Streets, Hoboken, N. J.

Freight in carloads, import or export, and freight handled on through bills of lading, will be delivered to or accepted alongside steamer's hatch, on steamship company's pier, and unloaded or loaded direct from or to cars, in lieu of lighterage.

[fol. 697] Copy

(Letterhead) The Pennsylvania Railroad Company

Legal Department, Philadelphia

November 11, 1938.

Hoboken Manufacturers Railroad Co. v. Railroads

I. C. C. Docket No. 27630

E. J. Hoy, Esq., Examiner, Interstate Commerce Commission, Washington, D. C.

Dear Sir:

On receipt of a copy of Mr. Healy's letter to you of October 29, 1938, I referred it to Mr. E. B. Hoskins, our Com-

nerce Agent, who has now advised me with respect thereto as follows:

"Copy of Mr. Healy's letter of October 29th to Examiner Hoy and of attachment alluded to therein are returned.

"Our Company does not carry in connection with the Hoboken Manufacturers' R. R. a provision similar to that contained in the tariffs of the West Shore R. R. and N. Y. O. & W.

"Attached for ready reference is an excerpt from our tariff I. C. C. 1450, setting forth the terminal arrangements with the H. M. R. R. The H. M. R. R. is a participating carrier in our tariff I. C. C. 1450 only in connection with Item 1165 'as an Initial and Terminal line.'

"Our tariff I. C. C. 1450 contains a provision similar to that contained in the tariff of the L. V. R. R. to which reference is made by Mr. Healy, viz: Rule 13(c). However, the H. M. R. R. is not a party to the latter provision of the tariff because of the limitations on its participation in the rules of the tariff as aforestated. On the other hand, the H. M. R. R. is a party to the L. V. R. R. tariff I. C. C. C-8750 without limitation under concurrence FX 3 (intermediate line) and FX 4 (terminal line)."

The tariff excerpts mentioned in the third paragraph of Mr. Hoskins' letter are enclosed.

Very truly yours, (Signed) Joseph F. Eshelman, Assistant General Counsel.

jfe/wea-enc.

fol. 698] cc Messrs. Parker McCollester, W. J. Mathey, W. T. Pierson, Thomas P. Healy, E. H. Burgess, F. R. Cross, E. A. Hodkinson, P. F. Gault.

fol. 699] Excerpt from I. C. C. 1450, Tariff 1426-B. The Pennsylvania Railroad Company Local and Joint Freight Tariff of Rules Governing Deliveries at Brooklyn, N. Y., Jersey City, N. J., Long Island City, N. Y. (Brooklyn Eastern District Terminal), New York, N. Y. Stations as Described Herein and Lighterage, Transfer and Terminal Regulations in New York Harbor Effective July 15, 1935, pages 45 and 46.

Item 1165, Rule 67

Hoboken, N. J. (Hoboken Manufacturers' Railroad), Class Rates

On traffic to or from Hoboken, N. J. (Hoboken Manufacturers' Railroad) Class rates published to or from New York Lighterage Station, N. Y., New York, N. Y., or Brooklyn, N. Y., stations of this company, will apply except where specific class rates to or from Hoboken, N. J. (Hoboken Manufacturers' Railroad) are in effect, the latter will apply.

Commodity Rates

On traffic (except Coal or Coke) (The product of Coal) to or from Hoboken, N. J., (Hoboken Manufacturers' Railroad) commodity rates published to or from New York Lighterage Station, N. Y., New York, N. Y., or Brooklyn, N. Y., stations of this company will apply, except where specific commodity rates to or from Hoboken, N. J. (Hoboken Manufacturers' Railroad) are in effect, the latter will apply.

Coffee

Rules governing furnishing of paper car linings, when forwarded from Hoboken, N. J., Hoboken Manufacturers' Railroad.

(a) The Hoboken Manufacturers' Railroad Company will, when practicable, furnish cars lined with paper for shipments of Green Coffee, in packages, carloads, when paper car lines are necessarily used for the safe transportation of the property.

(b) If paper car linings are supplied by shippers, or by the Hoboken Manufacturers' Railroad Company, as per Paragraph (a) of this Rule, and are necessary for the safe transportation of the property, allowance therefore will be made by the Pennsylvania Railroad Company to the shippers or the Hoboken Manufacturers' Railroad Company, at actual cost of material and labor; but not to exceed $1.50 per car.

(c) No freight charges will be assessed for the weight of paper car linings furnished as per Paragraphs (a) and (b) of this rule, but in no case shall less than the minimum

carload weight prescribed in tariff or governing classification be charged.

[fols. 700-701] Secretary's Certificate to following paper omitted in printing.

[fol. 702] EXHIBIT "D-1"

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 27630

HOBOKEN MANUFACTURERS' RAILROAD CO.,

vs.

THE AKRON, CANTON & YOUNGSTOWN RY. CO., et al.

Hearing Room "B", I. C. C. Building, Washington, D. C.

Thursday, July 6, 1939.

The above-entitled matter came on for oral argument before the Commission, at 10:00 o'clock, a. m.

Present: Commrs. Eastman (Presiding), Aitchison, Porter, Lee, Mahaffie, Miller, Splawn, Caskie, Rogers and Alldredge.

APPEARANCES:

Parker McCollester, 25 Broadway, New York, New York, appearing for Complainant.

W. T. Pierson, Midland Building, Cleveland, Ohio, appearing for Defendants in Official Classification Territory.

[fols. 703-704] Commr. Eastman: The Commission will hear argument in No. 27630, Hoboken Manufacturers' Railroad Company versus The Akron, Canton and Youngstown Railway Company. Mr. McCollester?

ARGUMENT OF MR. PARKER MCCOLLESTER

Mr. McCollester: If the Commission please. This case is on the complaint of the Hoboken Manufacturers' Railroad Company and it relates to the divisions between that railroad and the defendant railroads of joint through rates to and from Hoboken, applicable to traffic interchanged by the complainant, whom I will refer to as the Hoboken, with Sea-train Lines. I emphasize that the rates involved, the rates to be divided, are rates to and from Hoboken only. They

are not rates, joint rates, for through transportation via Seatrain. That is because, of course, with few exceptions northbound, there aren't at the present time still no joint through rates between the railroads and Seatrain, and Seatrain traffic, therefore, moves on combination rates up to Hoboken and the rates of Seatrain and its southwestern rail connections beyond.

So the rates here to be considered, or the divisions of which are to be considered, are joint through rates up to Hoboken. In other words, joint through rates to New York Harbor, because the rates to points served by the Hoboken Manufacturers' Railroad are the New York Harbor rates of the defendant's trunk lines and their connections.

[fol. 705] The proceeding brings in issue only the primary division of those rates as between the complainant, Hoboken, on the one hand, and all of the trunk lines on the other, including the western connections of the immediate trunk line connections of the Hoboken. There is no question of the sub-division as between the defendants of what may be left after divisions determined to be proper for the complainant have been paid to it.

By our complaint we have alleged that the divisions which the trunk lines have so far withheld for themselves and their connections are unreasonable, excessive, preferential to them, and discriminatory, prejudicial to the complainant. We have also alleged that the divisions which they have allowed to the complainant, Hoboken, are inadequate for it and prejudicial to it. So that the complaint puts the issue in both aspects. First, the fairness of the divisions which the trunk lines have withheld for themselves and their connections; and then the adequacy of the divisions which they have seen fit to allow to the complainant.

There is a fundamental issue in the case to which I will come in the course of the argument, but in order that Your Honors may have it in mind, I will state that issue at the beginning, although you may not entirely understand it until I lead up to it, but I want to set the issue before you. That issue is whether for the purpose of determining the divisions to be received by the Hoboken or the divisions to [fol. 706] be retained by the defendants. There may properly be included in the Hoboken's costs of operation certain payments which the Hoboken makes to Seatrain Lines

under a contract between the complainant and Seatrain. The details of the contract I will discuss presently.

That, I think, is the fundamental issue in the case because, I think, the defendants concede and the Examiner, in substance, finds that if these payments are to be included in Hoboken's costs in determining what it needs, or in determining what the defendants, on their part, are entitled to retain, then the complainant is entitled to the divisions which it seeks. On the other hand, if these payments by the complainant to Seatrain may not fairly and properly, lawfully, be included as a part of the costs of the Hoboken for the purposes of divisions here, then the divisions which the defendants have so far allowed to the complainant are adequate divisions and we are not entitled to anything more.

Commr. Eastman: Is the Hoboken controlled by Seatrain?

Mr. McCollester: It is, Mr. Commissioner. It is wholly owned except for directors' qualifying shares.

Commr. Rogers: Well, prior to the advent of Seatrain, were the divisions which the Hoboken received considered fair?

Mr. McCollester: May I come to that in a minute? I will tell you what they are, Mr. Commissioner. I just want to re-state this fundamental issue and re-state it in a somewhat different way. I have stated it now from the standpoint [fol. 707] of the Hoboken as to whether these costs may be included—these payments may be included in Hoboken's costs. Looked at from the standpoint of the defendants, and bear in mind that the complaint puts in issue the fairness of what the defendants have withheld as well as what the Hoboken is entitled to receive. Looked at from the standpoint of the defendants, I think the underlying fundamental issue in this case is whether because due to Seatrain invention, due to the method of interchange between a railroad and a water carrier, which the development of Seatrain has made possible, and which these defendants have done their very best to defeat, whether they are entitled to greater earnings on Seatrain traffic than on traffic that they interchange with all water lines in New York Harbor, or traffic that they deliver to the complainant for interchange with other water lines served by the complainant.

In other words, are they entitled, having done their best to defeat Seatrain, are they entitled to all of the savings in

interchange between rail and water carrier which the Seatrain development has made possible?

Commr. Aitchison: Would their division vary according to whether they have aided or——

Mr. McCollester: I don't think so, Mr. Commissioner, that may be true there, but it is nevertheless a factor to be considered, and I think when I say I don't think they would vary, I think that it is a factor that you must consider in [fol. 708] determining the fairness of this division because, after all, when you are dividing rates between carriers it is not entirely a question of what is just and reasonable judged by the standards applicable to rates to be charged to the public. It is what is fair between the points.

Now, the complainant, Hoboken Manufacturers' Railroad, is a short switching line located on the waterfront in New York Harbor at Hoboken, New Jersey. I don't know whether you can see this map, but it will just give you a general idea of it. This is a map of New York Harbor. The different railroad terminals are shown in red on the map. The Hoboken Manufacturers' Railroad runs along the waterfront right there, Hoboken. It connects at its northern end with the Erie Railroad and it is through that connection that interchange is made with all of the trunk lines reaching New York Harbor. It interchanges directly with the Erie and over Belt Line 13, so-called, which runs back of the Palisades with some of the other railroads and via the Erie with the West Shore Railroad on the north.

The stock of Hoboken, as I have said, is owned entirely by Seatrain except for 5 directors' qualifying shares. The circumstances under which that stock was acquired, I will describe briefly presently when I come to discuss the contract which is here in question. The Hoboken Manufacturers' Railroad, besides serving Seatrain, serves piers used by a large number of other water lines, the Holland-America [fol. 709] and various other lines in the foreign trade, and the Pan-Atlantic Steamship Company, which is a direct competitor of Seatrain, in the trade between New York Harbor and the Gulf. It also serves a large number of industries which are local to its rates.

Although the Hoboken is essentially a switching line and it has been so found to be by Your Honors, for some reason, historical or not, it is impossible to determine, its compensation has always been not in the form of switching

charges published by it to be absorbed by its trunk line connections, but in the form of divisions of joint through rates. In other words, it is a party with the trunk lines to joint through rates to and from steamship piers served by it and local delivery points on its line in Hoboken. Those rates are in all instances, except for a very short haul traffic, are in all instances the regular New York Harbor rates.

The existing basis of division—I think this will answer your question, Mr. Commissioner—The existing basis of divisions goes back to a compromise years ago when the Hoboken was operated by the War Department, having been taken over by the Government from the Germans who previously owned it. At that time the Hoboken brought a complaint attackings its divisions on general freight. That complaint was finally compromised without coming to the Commission on the basis of two divisions. I don't mean to deal with the divisions on special kinds of freight, because the general point can be indicated by the basis of divisions [fol. 710] on freight other than automobile, silk, and a few special commodities.

Commr. Aitchison: Is there another carrier known as the Manufacturers' Railway?

Mr. McCollester: No, not so far as I know in New York, Mr. Commissioner. This is the Hoboken Manufacturers' Railroad sometimes called the Hoboken Shore Road, sometimes called the Manufacturers' Railroad. I am referring to it as the Hoboken. I hope that doesn't confuse it.

Commr. Aitchison: And does it connect with or necessarily use the line of the Port of New York Authority?

Mr. McCollester: Well, the Port of New York Authority owns no railroad. What you have in mind undoubtedly is that in its early days the Port of New York Authority had a scheme for a general unification of terminals in New York Harbor.

Commr. Aitchison: Comprehensive plan.

Mr. McCollester: Comprehensive plan. About as far as that scheme ever got was labeling these lines of railroad that runs back of the Palisades Belt Line 13. That is made up of several railroads, some owned by one and some owned by another, jointly operated by the railroads themselves. It is not owned or operated by the Port Authority. That is the means of connection between the Pennsylvania, the

Central Railroad of New Jersey, Lackawanna, on the south, and the Hoboken Manufacturers' Railroad through the Erie interchange. That is, Belt Line 13 runs into the Erie [fol. 711] and then the Erie interchanges with the Hoboken Manufacturers' Railroad.

Commr. Aitchison: Well, Line 13 is a neutral line, isn't it?

Mr. McCollester: Well, I don't know what you mean by neutral.

Commr. Aitchison: As part of this adjustment the Port Authority made. It contemplated that Belt Line 13 should be used impartially and neutrally.

Mr. McCollester: That may be so. I think as far as they got was an arrangement for joint operation, part of the time it is operated by the Pennsylvania and part of the time by the New York Central. I think that is it.

Now, the basis of divisions which is arrived at as a result of this compromise provided for a division of $1.35 a ton on—the language is somewhat important—carloads loaded or unloaded by H. M. R. R., Hoboken Manufacturers' Railroad, or at its expense; 60 cents a ton on carloads loaded or unloaded by shipper or consignee or at their expense. Now, that language is important here for the reason that under that language the division of $1.35 or 60 cents, which should be applicable depends upon whether the freight is loaded or unloaded by the Hoboken at its expenses, or loaded or unloaded by the shipper or consignee at his expense. But in the case of Seatrain freight, it is not loaded or unloaded at all. So that this old agreement has no application, and [fol. 712] since Seatrain has been in operation beginning with October, 1932, there has been no understanding between Hoboken and its trunk line connections as to what the division of the Hoboken should be on Seatrain traffic which is neither loaded or unloaded by Hoboken at its expense, or loaded or unloaded by the shipper or consignee. In other words, it isn't loaded or unloaded at all.

Commr. Caskie: Well, do you get the $1.35 when you interchange with the break-bulk carriers when you load it or unload it?

Mr. McCollester: We do. On all freight, for instance, interchanged with the Pan-Atlantic, we are paid $1.35. The railroad takes it out of the car. Now, that is subject to this qualification, Mr. Commissioner, I was going to come to it later but I had better state this now. There are, as

Your Honors know, two kinds of rates generally referred to as lighterage free rates and as local rates. Lighterage free rates are rates on which probably the bulk of freight interchanged with steamship lines in New York Harbor move. Under those rates the undertaking of the railroads is to take the freight out of the car and place it within reach of ship's tackle; or deliver it by lighter to the steamship pier within 100 feet of the string piece of the pier. Under those rates the railroads will lighter freight to steamships docking all along the New York-Manhattan waterfront down to the ships docking at the Brooklyn water-[fol. 713] front down here; or in the case of freight going to Pan-Atlantic ships served by the Hoboken, they will deliver the freight to the Hoboken and the Hoboken places the car on or adjacent to the steamship pier, takes the freight out of the car, moves it across the pier, and puts it at the foot of ship's sling and receives $1.35 from the trunk lines for so doing.

Commr. Caskie: Well, after you get possession of it, it is determined whether it shall go to one of the break-bulk carriers or the Seatrain. Up to that point it doesn't make any difference to the railroad.

Mr. McCollester: Up to that point the railroad service is exactly the same, and that is one of our main points so far as the equitableness of the defendant's division is concerned. We say their service is identical whether freight is going to Pan-Atlantic ships or Holland-America ships or Seatrain ships. They deliver to us at the Erie interchange, their service is the same and, therefore, they are not entitled to any more if it so happens that because of the Seatrain development that freight can be interchanged without being taken out of the car.

Commr. Alldredge: Now, their service as you say ends, but does the responsibility end?

Mr. McCollester: We say it does, Mr. Commissioner. If for some reason it should be necessary to take that freight out of the car and deliver it to Seatrain, and sometimes it is as, for instance, when they load it in a car that is to com-[fol. 714] pletely go on a Seatrain ship, the obligation is theirs to take it out of the car. We submit that the obligation and undertaking is just the same. The undertaking, in substance, is this and this may be the crux of the case. We say that the undertaking is to make a good delivery alongside ship.

Commr. Rogers: I take it that the expense that the Hoboken is put to would vary according to how the delivery is made.

Mr. McCollester: Yes. May I come to that—that is where this contract comes in.

Commr. Rogers: And ordinarily the expense that the different carriers are put to have something to do with the divisions, wouldn't it?

Mr. McCollester: Oh, that is quite true, Mr. Commissioner. Now, so far as the issues here are concerned they arise, as I say, out of the fact that the old compromise agreement for divisions is not applicable and since Seatrain has been in operation there has been a constant controversy between the Hoboken and its trunk line connections as to what its division on Seatrain traffic should be.

The Hoboken first conceived that since the arrangement with Seatrain produced some savings in the method of interchange between a railroad and a water carrier, it would divide those savings with the trunk line railroads. It hoped by so doing to encourage the trunk line railroads to work along in developing traffic to move via the Hoboken and Seatrain. The proposal originally made by the Ho- [fol. 715] boken to the trunk lines was that instead of paying $1.35 a ton to Hoboken as they would have to do if that freight were going via the Pan-Atlantic, that they pay it a $1.00 a ton, split the difference between 60 cents and $1.35. Some of the trunk lines made settlement with the Hoboken for a little while on that basis. Most of them did not do so. Some of those who did not make settlement with the Hoboken on the $1.00 basis, nevertheless deducted the $1.00 themselves before prorating with their connections. The trunk lines, however, for the most part, except for, I think it was the Central Railroad of New Jersey and the Lackawanna that paid Hoboken $1.00 for a little while, the rest of the trunk lines have paid the Hoboken during all of this time only 60 cents a ton; their argument being, of course, that since the freight isn't unloaded from the car, the 60 cent basis is a fair one, is the one that is applicable under the contract—under the compromise basis of divisions.

We have accepted that 60 cents under protest and we are here asking Your Honors to decide what is the fair and equitable basis of division for the Hoboken to receive on this traffic.

Commr. Mahaffie: What figure per car over a period has the 60 cents developed?

Mr. McCollester: Well, the average loading per car, Mr. Commissioner, is from 28 to 30 tons. The average loading of car interchanged with Seatrain in 1937 was 28 and a half [fol. 716] tons. Multiply that by 60 cents and you get the earning per car.

Commr. Eastman: Does Hoboken pay something out of that 60 cents to Seatrain?

Mr. McCollester: Yes, it does and I want to come to that in just a moment. Now, let me recall to you the fact that out of these rates which are the same rates that apply to Hoboken, the trunk lines in interchanging with the Morgan Lines, for example, take that freight out of the car, lighter it alongside of the Morgan Lines ship. They will even lighter, and they do, to the Pan-Atlantic served by the Hoboken direct. Now, the record shows that their costs for lighterage runs from $1.41 to two dollars and something or other per ton; so that the net revenue that they have, after performing the service incident to making delivery to a steamship line, is represented by the rates less that lighterage cost. Under those same rates they will send freight down to the Brooklyn contract terminals, Bush Terminal, for example, way down here on the Upper Bay, and they will pay those terminals for taking the freight down there, contract payments ranging from $1.06 to $1.60 per ton; so there again the revenue remaining to them is represented by the rates less those payments.

As previously stated, if the freight is going to the Pan-Atlantic ships served by the Hoboken and they send it around via the Hoboken instead of lightering it alongside the Pan-Atlantic ship, they will pay the Hoboken $1.35 a ton if the rates are lighterage free rates. So that we say [fol. 717] that for them to withhold everything except 60 cents a ton merely because the interchange with Seatrain doesn't involve unloading the cars, results in their divisions being unreasonable and excessive.

Commr. Caskie: Well, doesn't it cost something to get the car from the Hoboken tracks on the Seatrain?

Mr. McCollester: That is a cost to Hoboken itself, Mr. Commissioner. That doesn't cost the trunk lines anything.

Commr. Caskie: I know, but it is a cost to the Hoboken.

Mr. McCollester: That is right, quite so. Now, I said that the Hoboken originally proposed as a basis of division

a $1.00 per ton spreading the difference between 60 cents and $1.35. That was proposed on all freight interchanged with Seatrain. It later developed that a considerable part of the freight interchanged with Seatrain was freight that moved not on lighterage free rates where the obligation of the railroad is to make the complete delivery to shipside, taking the freight out of the car and putting it within reach of ship's tackle; but a considerable part of the freight moved on local rates where the railroad's obligation is completed when it places the car for unloading. If such freight is interchanged with a steamship line, say the Holland American or the Pan-Atlantic by the Hoboken, the Hoboken receives only 60 cents a ton from the trunk lines and the expense of taking that freight out of the car is borne either by the shipper of the freight or by the steamship company, not [fol. 718] borne by the Hoboken.

We, therefore, conceive that it wasn't fair to ask the trunk lines to pay $1.00 a ton on all freight and we amended our demand to what it now is, that we be paid $1.35 a ton the same that we are paid if the freight is interchanged with the Pan-Atlantic; $1.35 a ton if the freight moves on lighterage free rates and only 60 cents a ton if it moves on local rates. That change in our claim on the basis of the 1937 traffic would have involved, if it had been lived up to and observed by our opponents, a substantial reduction in the payments they would have made to the Hoboken.

Commr. Caskie: Does the record show what it costs the Hoboken to get the car from its tracks on to Seatrain?

Mr. McCollester: Yes, Mr. Commissioner, to this extent: This is a blueprint of the Hoboken Manufacturers' Railroad. Its point of interchange with the Erie is up here, the road extends down along the Hoboken waterfront. The point of interchange with Seatrain, Seatrain's berth is there. Now, the record shows that it costs no difference in the cost of switching to the Hoboken. No difference, at least, which can be discovered, whether the freight is going down to the lower end or is going right there because if the freight is going to the northern end it may be that the locomotive is down at the southern end when the cars are shoved in by the Erie; so the locomotive has to go up. It may be that when the freight is going to the southern end and the [fol. 719] locomotive is up at the Erie interchange where the cars come in from the Erie; so that it has been impossible for Hoboken and it was impossible for a committee of

trunk line operating people who investigated Hoboken's operations and costs, to conclude that there was any difference in average cost for the switching service dependent upon the portion of the Hoboken's line to which the car was going.

Accordingly, what we have in the record on the subject of costs of Hoboken is the average cost of its switching operations. That figure for 1936 was $15.34 per car or 55.7 cents per ton; and for 1937 it was $16.11 per car or 59 cents per ton. Now, that is for the switching operation alone. That does not include the handling of the freight out of the car. It does not include, in other words, the terminal operation incident to making delivery to a Pan-Atlantic ship.

Commr. Mahaffie: Is that full cost?

Mr. McCollester: That is full cost, the full cost in switching operations only. Nor does it include——

Commr. Splawn: Now you are telling us what there is besides switching operations right now.

Mr. McCollester: Nor does it include the payments made by the Hoboken to Seatrain. Now, b*ecome* I come to that let me sum up on the question of the trunk lines position. We say, as I previously stated, that the trunk lines are not entitled to more for their service which is identical, regardless of whether the shipment is going Pan-Atlantic or Sea-
[fol. 720] train, dependent upon the steamship line to which that car is to be delivered.

Commr. Caskie: Another way of stating it would be, are you entitled to less?

Mr. McCollester: Are we entitled to less?

Commr. Alldredge: Well, you tell us you would get it. If you get it, would you keep it?

Mr. McCollester: We would not keep all of it. I wanted to preface what I have to say so far as Seatrain traffic is concerned with this: That it is the custom more or less in the Harbor, it is certainly the practice on the Hoboken, that instead of the shipment going to the Pan-Atlantic or to the Holland American, moving under lighterage free rates where the obligation is on the railroad to take the freight out of the car, that obligation is not performed by the railroad with its own labor. The steamship lines have stevedores on their docks. It is more economical for the railroad to contract with the steamship line or with its stevedores to do that handling of the freight from the car

to the ship's sling as part of its total operation of loading the ship, than it is for the Hoboken to have its own labor to take the freight out of the car. Consequently, in the case of the Holland American or in the case of Pan-Atlantic, there is a contract between the Hoboken and the steamship line or its stevedores by which the Hoboken pays to the stevedore or to the steamship company for completing the [fol. 721] railroad's undertaking an amount varying from 73 to 75 or 76 cents a ton for that handling operation.

In other words, the Hoboken receives $1.35 a ton if the freight is to go by the Holland American lines. It pays out of that $1.35 approximately, we will say, 75 cents a ton. It retains 60 cents a ton which is its cost for doing the switching.

Now, under this contract which I am going to discuss now between Hoboken and Seatrain, Seatrain has undertaken to relieve the Hoboken just as has the Holland American or the Pan-Atlantic under its contract, to relieve the Hoboken of the balance of its terminal operations, the complete delivery to ship; to use its patented device to accomplish the interchange between railroad and ship. To put its investment in the service of the Hoboken to that extent, and Seatrain has demanded and Hoboken has agreed to pay—make a certain payment. We were confronted with the question, what that payment shall be?

Commr. Splawn: The Hoboken was in no position to refuse to pay what was demanded under the circumstances.

Mr. McCollester: That is right. We were confronted with the question of determining what that payment should be and we concluded that it was fair to make that payment the lowest payment made to any other steamship line or its stevedores. So that the contract provides that the Hoboken shall pay Seatrain 73 cents per ton on freight moving on lighterage free rates. It pays Seatrain nothing on freight [fol. 722] moving on non-lighterage free rates.

Now, the whole question in this case turns on whether that contract and that payment can properly be considered as a part of Hoboken's costs for the purpose of determining the divisions to be paid to it by the trunk lines.

Now, I want Your Honors to understand the circumstances under which that contract was entered into: Our opponents look upon that contract as a device for funneling some money out of them over to Seatrain.

Commr. Splawn: Didn't the Examiners say that it is the obligation of Seatrain to do this service that the Hoboken——

Mr. McCollester: No, he did not, Mr. Commissioner. What the Examiner—As I read the Examiner's report, the Examiner doesn't find this contract invalid, he doesn't find that the contract fails to set the obligation between the Hoboken and Seatrain, but he says whatever may be the obligation there and however valid the contract may be, nevertheless in deciding what the division should be to be paid by the trunk lines, that payment must be disregarded. He treats the contract as in existence for the purpose of assuming that all the freight is going to move under it; but he doesn't give the Hoboken the money to live up to the contract.

Now, I want Your Honors to appreciate the circumstances under which that contract was entered into because I concede that since the contract is one between a parent and [fol. 723] a subsidiary, it should be scrutinized. In other words, Seatrain is not entitled to use its ownership of the Hoboken to force the Hoboken to enter into a contract with it for an improper payment to increase Hoboken's costs and take money out of the defendant's trunk lines. If that is what the contract is, if that is the way it is to be construed, then these payments under the contract should not be included in the Hoboken's costs for the purpose of fixing its divisions.

Commr. Rogers: If there were no contract, suppose they were both under one ownership and operated that way, would your showing on the costs and other matters be about the same as it is under this contract, do you think?

Mr. McCollester: I don't know that I understand your question, Mr. Commissioner.

Commr. Rogers: Disregarding this Seatrain and the Hoboken being separate corporations, suppose they were all one, would it on the fact be any different to your case?

Mr. McCollester: Oh, I think so because in the first place, they couldn't be all one because you would have a railroad and a steamship company one corporation and that would involve too many complications to be conceived of at the present time.

Commr. Rogers: I appreciate that.

Commr. Aitchison: There are such.

Mr. McCollester: Yes, but they have complications which we can't get into. When Seatrain——

[fol. 724] Commr. Rogers: Let me get that straight. Is Seatrain making any money out of this contract? Are they making a profit off of Hoboken?

Mr. McCollester: Well, Seatrain is receiving 73 cents a ton. For that 73 cents a ton it is putting its patents, its device into the service of accomplishing interchange between railroad and its vessels. It is making money to that extent. That costs it money to do that. It couldn't handle cars in this way if its ships weren't specially designed for that purpose. It couldn't handle money in this way if it didn't have the crane specially designed to do that. The crane was built by Hoboken with money borrowed by Seatrain and it is rented by Seatrain. It is part of Seatrain's facilities. It couldn't do that if it didn't use the patents for which it has to pay royalty to the patent owners. Seatrain is not the owner of the patent.

Commr. Miller: Who pays for the operation of this crane?

Mr. McCollester: Seatrain pays for the operation of the crane. Now, when Seatrain contemplated operation out of New York Harbor in 1932, it cast about for a terminal. It first considered a terminal on the lines of one or the other of the trunk lines themselves. It was offered a terminal by several of them on their property. In those negotiations the record here shows that it was a part of the negotiations that Seatrain was to receive a payment for putting its facilities at the trunk line's service similar to the payments [fol. 725] made to other steamship lines for completing the railroad's undertaking under these lighterage free rates.

Seatrain did not enter into an arrangement with one of the trunk lines because it was felt that its terminal should be at some neutral point in the harbor which could be reached by all the trunk lines. We have no reciprocal switching in New York Harbor, as Your Honors, of course, know. The Hoboken Manufacturers' Railroad was suggested as the ideal place. Seatrain entered into negotiations with the Hoboken Manufacturers' Railroad which was then owned by the Chatman interests, the United States Line. In those negotiations it was one of the conditions that there should be a payment to Seatrain for the use of its of patents for the benefits that it would afford to the

railroad in the added traffic to move over the railroad's line, and in the benefit to be derived by the railroad in the savings of interchange expense in interchanging between the railroad and a water line.

The reason that the Hoboken became owned by Seatrain was that in the course of those negotiations it developed that the Hoboken was broke and that it was about to fold up, and the only way that it could be kept in operation was for the Seatrain to buy it and put more money into it and keep it going. Seatrain bought the railroad from the trustees in liquidation, put money into the railroad and put it on its feet. What that was done, Seatrain then proceeded to enter into the same contract with the railroad that was contemplated when the Seatrain management was dealing [fol. 726] with the former management of the railroad, and that is the contract, in substance, that was the original contract which has been succeeded by the contract that is now in effect.

Commr. Eastman: What is the present financial condition of Hoboken?

Mr. McCollester: The Hoboken is broke, Mr. Commissioner, at the present time. According to its books adjusted to include income for the particular year and exclude income actually received in that year but applicable to prior years, it had a deficit in 1937 of $50,000. On the basis of a 60 cent division, its deficit in 1936—I should say that was according to its books. Now, it is set up on its books the division which it claimed as an account receivable less a reserve because of the fact that the railroads didn't pay what the Hoboken claimed.

If it had set up as a reserve the full difference of what is claimed and 60 cents, in other words, if its division was 60 cents a ton, which is all the trunk lines have paid to it, it would have earned a deficit in 1936 of around $18,000 and in 1937 of around $106,000. Now, that, I don't want to mislead Your Honors, that deficit is on the basis of these payments made to Seatrain. If you eliminate those payments which amounted to about $110,000 in 1936 and $100,000 in 1937, you change the picture; but of that payment of $110,000 about $40,000 was paid by the Hoboken to Seatrain on traffic originating on the Hoboken or terminating on the Hoboken itself.

[fol. 727] In other words, the payments to Seatrain on this freight interchanged with the trunk lines amounted to about $60,000. The Examiner, in his proposed report, has computed that if you eliminate that $60,000, the Hoboken would have had a deficit one year and a small profit the other, averaging it would have a net income for the two years on the average of $3,000.

That is all I want to say, if Your Honors please, in our opening except to point out to Your Honors this: So far as this contract is concerned I think the fact that the contract is between a parent and a subsidiary doesn't render it an invalid contract. I think that the Hoboken was entitled to pay something to Seatrain to get Seatrain to locate on its terminal. It is entitled to pay something for the advantages which the Hoboken derives in being able to handle its water-borne freight moving between the North Atlantic and the Gulf and being relieved of having to go to the expense of taking it out of the car and putting it within reach of ship's tackle or loading the car if the freight moves in the reverse direction. It is entitled to pay something.

Then the question is, is the payment excessive? Well, on that our best judgment was that all we could go on was to take the payments made to other steamship lines for completing the railroad's obligation under these lighterage free rates, and that was done. We took the lowest payment there was of 73 cents. Now, if Your Honors conclude that [fol. 728] that contract is invalid or that the payments are not properly part of Hoboken's costs, what is the result? These trunk lines will receive the entire benefit of Seatrain's operation, of the savings and interchange made possible by Seatrain, and none of it will go to the fellow who actually made the savings possible and improved the service.

Commr. Eastman: Mr. Pierson.

ARGUMENT OF MR. W. T. PIERSON

Mr. Pierson: May it please the Commission. I agree with Mr. McCollester that this case turns very largely on the question of whether certain contractual payments that are made by Hoboken to Seatrain are proper operating charges of Hoboken which must ultimately be borne by the trunk lines. I will come to that question a little later.

I think it might be helpful if I very briefly describe the operation involved in moving cars from the interchange

tracks to the Seatrain cradle. The Erie handles the cars from a connection with the West Shore Railroad, classifies them, brings down to the interchange track of the Hoboken along Park Avenue. For the Erie's service of bringing the cars down to the West Shore, performing a classification and then placing them on the interchange track, the Erie receives $1.05 per car.

The Hoboken takes the cars off of the interchange tracks, brings them down to a classification yard where the cars are segregated between those going south of 14th Street and those north of 14th Street. This classification segre- [fol. 729] gates out the Seatrain cars which are taken down to a hold yard where they are held until the arrival of the Seatrain vessel. After the Seatrain vessel arrives, the cars are taken one at a time and brought through the Seatrain freighters or elevator. This secondary classification performed by the Hoboken for Seatrain is necessary because they have to be classified according to size, weight, destination and commodities.

Mr. McCollester referred to a cost study or cost figures, rather, of the Hoboken. Now, those figures show that in 1936 the cost to Hoboken was $15.34 and in 1937, $16.11 per car to cover all operating expenses, taxes, rents and interest on the debt. Now, those amounts, $15.34 and $16.11 per car, can be compared with the charge of the Erie of $1.05 for its service.

Commr. Eastman: $1.05 per what?

Mr. Pierson: Per car. In other words, the Hoboken's costs is about 16 times the amount received by the Erie. Now, if we take the Commission's valuation of December 31, 1933 which was $1,625,000 and substitute that for interest on debt and rent of road, we find that the cost to Hoboken was $17.93 per car in 1936 and $18.28 in 1937.

The defendants in this case made a traffic study covering four alternate months in 1936 and the months of January and March, 1937, to determine just how much the Hoboken did receive per car. And we find that on the old rate of 60 cents prior to the Ex Parte 123 increases, the average [fol. 730] revenue of Hoboken was $17.10 per car. Now, that can be contrasted with the Hoboken's cost of $15.34 and $16.11. Based on the rates of 63 cents and 66 cents, reflecting the 5 and 10 percent Ex Parte 123 increases respectively, the revenue to Hoboken is $18.67 per car which

represents roughly 32 and one-half percent of the revenue.

Now, if Hoboken's contentions are sustained and it is allowed 60 cents on a non-lighterage free rate and $1.35 on all lighterage free freight interchanged with Hoboken, on the basis of our traffic study it will receive $25.14 per car. And on the basis of the complainant's own figures for the last 10 months of 1937, Hoboken will receive $28.89.

Commr. Eastman: Those costs don't include the costs which Hoboken incurs when it unloads into Pan-Atlantic, for example, do they?

Mr. Pierson: Well, I am dealing with the 60 cents which does not involve any loading or unloading. If a car of lighterage free freight is going to Pan-Atlantic, for example, then we will give the Hoboken 60 cents, and we will pay in addition 75 cents for the cost of loading or unloading. Now, if it is non-lighterage free freight——

Commr. Eastman: Well, you don't pay that yourselves, do you?

Mr. Pierson: The trunk lines pay Hoboken. Hoboken obtains reimbursement of 75 cents a ton on every car of non-lighterage free freight loaded or unloaded. It gets it either [fol. 731] from the steamship company or it gets it from the shipper or consignee. In the last analysis, it has 60 cents, or 63 or 66 cents with the increases, net, because it obtains reimbursement of all expenses actually incurred in unloading or loading the cars. The whole contention in this case is that on the Seatrain traffic, the cars are not loaded or unloaded and we object to paying 75 cents for a service not performed. That's the essence of our dispute.

Commr. Mahaffie: What is the distance from the Erie interchange with the Hoboken to the Seatrain loading facility?

Mr. Pierson: The distance from the Erie-West Shore interchange down to the interchange with the Hoboken is 500 feet. The Examiner in his proposed report finds that the distance from the Erie-Hoboken interchange down to the Seatrain car cradle is 2500 feet. Based on the map which is to the scale of 200 feet to the inch, it scales 2100 feet.

Commr. Eastman: Well, Mr. McCollester is right, isn't he, in this, that if you don't pay that 75 cents then you are getting more for exactly the same service because of the

fact that the Seatrain has developed a better method of interchanging freight?

Mr. Pierson: Well, our point is that Hoboken is a switching carrier, that it is entitled to its operating expenses, plus taxes, plus a fair return on the property devoted to the service. Now, we contend that our obligations——

Commr. Eastman: I am not asking you what you con- [fol. 732] tend, but I am asking you what the fact is. Isn't it the fact that you would get more for exactly the same service because of the fact that Seatrain has developed an improved method of interchange?

Mr. Pierson: Yes, unquestionably. We obtain the benefit of the 75 cents a ton due to the lack of necessity of loading or unloading the cars; but it is our contention that Seatrain is the owner of the patent, the patent is personal to Seatrain, and that it is deriving a benefit from engaging in the transportation business. Seatrain licenses the patent at the expense of approximately $50,000 a year. Now, this patent runs until 1944, I believe, and it is the attempt of Seatrain through Hoboken to saddle that expense of its patent on the trunk lines. Now, that patent which cost them approximately $50,000 a year is also used at Havana in connection with foreign traffic. It is also used in the southwest at Belle Chasse, Louisiana. So we contend that even if it were a proper charge against the trunk lines through Hoboken that nevertheless the full cost should not fall on the eastern trunk lines.

Commr. Caskie: Well, Mr. Pierson, do the trunk line railroads — anything to their New York Harbor rates to take care of this—I mean any extra charge to take care of this loading or unloading? Don't they absorb those charges out of that New York Harbor rate?

Mr. Pierson: Yes, that is correct.

Commr. Caskie: All right. Isn't the correct way of stat- [fol. 733] ing the proposition that you save more when you interchange with the Seatrain than you do with the break-bulk carriers? You don't make more but you save more.

Mr. Pierson: That is correct.

Commr. Caskie: You haven't charged the public in the beginning for it.

Mr. Pierson: I think that is a correct statement.

Commr. Alldredge: Do I understand it that when business goes by the Seatrain that there is actually more switch-

ing service by the Hoboken than there would be it it went by the break-bulk lines?

Mr. Pierson: There is this difference in the situation. The switching service is substantially the same. The distance to the Pan-Atlantic may be slightly longer, but that is not an important factor. It is a fact, however, that Hoboken performs a secondary classification for Seatrain. The original contract between Hoboken and Seatrain provided for a payment of 40 cents per ton by Hoboken to Seatrain for Seatrain's classification, the theory being that Hoboken was incapable of performing this secondary classification and it was done by Seatrain for the account of Hoboken and Hoboken paid 40 cents a ton.

Then after the complaint was filed on December 31, 1936, a new contract was entered into whereby Hoboken pays Seatrain 73 cents a ton, on the theory that since the cars are not loaded or unloaded moving in connection with Seatrain [fol. 734] that Seatrain is entitled to this saving and it obtains this amount by Hoboken recognizing that theory. Now, as Mr. McCollester has said, in 1936 Hoboken paid $110,000 to Seatrain, in 1937 it paid approximately $100,000. Now, that is practically twice the amount of the royalty cost per annum of the patent to Seatrain and the difference——

Commr. Eastman: Well, isn't there a labor expense in connection with that? While this freight isn't loaded or unloaded it is put into the ship and there is an expense in putting it in, isn't there?

Mr. Pierson: Yes. I am glad you mentioned that point. I think it is very important in this case. In connection with the break-bulk lines our tariff obligation is to put the freight alongside the ship within reach of the ship's tackle, and incidental to that we load or unload the freight from the car. Now, the actual placing of the freight from the pier into the vessel and storing it is a cost or expense borne by the steamship company. Now, as to Seatrain traffic we say when we place that car at the Seatrain cradle, the freight is alongside ship and the expense of elevating that car, placing it in the hold of the vessel is the same expense incurred by a steamship company in loading or unloading its boat. In other words, the cradle and crane are the functional equivalent of your cargo mast and sling and tackle. Does that answer your question?

Commr. Eastman: Yes.

[fol. 735] Commr. Miller: Well, Hoboken has to keep a locomotive right there switching cars all the time when the ship is being loaded, doesn't it?

Mr. Pierson: Yes. These cars are pulled by a gasoline locomotive owned by the Hoboken, one at a time from this hold yard down to the car cradle. Then the gasoline locomotive goes back and gets another car. These cars have been previously classified as to destination, lengths, commodities, and as I understand it the traffic for Havana takes the upper decks and traffic for Belle Chasse on the southbound movement takes the lower decks. There are four decks of 32 tracks each, and the commodity and size and destination has a great deal to do with the manner of loading of the boat.

Seatrain through Hoboken is attempting to obtain reimbursement of this $50,000 a year annual payment for its patents. Now, as I have said,——

Commr. Mahaffie: Who owns that patent?

Mr. Pierson: It is owned by the Railway Transport.

Commr. Mahaffie: Does it have any connection with the Seatrain?

Mr. Pierson: I don't know.

Mr. McCollester: I will say the stock of the Railway Transport is owned by several individuals, including Mr. Brush who is the president of Seatrain, and several other individuals.

Commr. Mahaffie: Mr. Brush is the chief owner of the [fol. 735-A] patent and also of Seatrain, isn't he?

Mr. McCollester: I don't know, Mr. Commissioner, what his proportionate interest in the patent is. He doesn't own the majority of Seatrain. I don't think he owns the majority of Seatrain. I don't think he owns the majority of the patent.

Commr. Mahaffie: I didn't mean the majority. I thought he prabably was the largest owner in both.

Mr. McCollester: I think he is the largest owner in the patent. I don't think he is the largest owner in Seatrain. He is one of the largest owners.

Mr. Pierson: This payment which Seatrain is trying to obtain from Hoboken in the amount of $50,000 a year, of course, is less than the amount of the payments actually made by Hoboken to Seatrain. Those amounts are in the neighborhood of $100,000, so as to account for the differ-

ence between $50,000 and $100,000, the contention of Hoboken is that it is entitled to pay Seatrain this amount because of the alleged value of Seatrain to Hoboken; the theory is that Hoboken has a very desirable traffic connection and that Seatrain is feeding traffic to Hoboken, and that, therefore, because of this traffic value of Seatrain, it is entitled to an additional $50,000 contribution in addition to the amount of the $50,000 payment for the patent.

Now, we submit that a payment of $50,000 because of the alleged value of the traffic from a connection constitutes in effect inefficiency on the part of Hoboken and that that cost [fol. 735-B] ought not to be saddled on the trunk lines. The trunk lines are just as essential to Hoboken as Seatrain. We make no contention that this contract between Hoboken and Seatrain is invalid. It is our contention that it is a contract which does not represent a payment for the general operating expenses. That, therefore, the cost ought not to be charged back against the trunk lines. It may be perfectly proper as between the parent and the subsidiary corporation, but we have no particular concern with that so long as the amount is not reflected in Hoboken's operating costs and without the inclusion of these payments of around $100,000 a year to Hoboken, Hoboken is making a very handsome profit. It is obtaining reimbursement of all its operating expenses, exclusive of these payments to Seatrain. It is getting back all its taxes. It is getting 6 percent return on the Commission's valuation of $1,625,000. And in this connection it should be borne in mind that the road was acquired in 1932 by Seatrain at a cost of only $300,000.

Commr. Aitchison: When was this valuation made, as of what date?

Mr. Pierson: It was made in 1936 as of December 31, 1933, and retirements bring the valuation down as of 1937 to the figure of $1,616,138.

Commr. Aitchison: Is that a 19 A valuation?

Mr. Pierson: Yes, under Section 19 A. Now, if the amounts contended for by Hoboken are allowed, the return [fol. 736] on the Commission's property valuation plus taxes, plus operating expenses, will be equivalent to approximately 16 percent.

Commr. Rogers: Mr. Pierson, you spoke of these patents being utilized at other ports. Have you made any effort to determine the extent to which they are used there? Suppose

you were going to apportion this $50,000 as between their uses.

Mr. Pierson: We submit first that the patents are personal to Seatrain. That Seatrain's divisions are not involved in this case. If the question should properly arise, it should arise at sometime when Seatrain itself claims some value from these patents. We think the situation is no different than the ownership or licensing of patents by railroads of which we have many. We have never attempted to capitalize on our patents which permit us to operate efficiently and economically. We think the same thing applies to Seatrain.

Now, if this charge of $50,000 is a proper charge against the trunk lines, of course, it is only temporary because the patents expire in 1944.

Commr. Aitchison: Are they renewable?

Mr. Pierson: Not to my knowledge. Perhaps Mr. McCollester knows.

Mr. McCollester: They are.

Mr. Pierson: And approximately one-fourth of the traffic is handled at Havana and all of the traffic, 75 percent, is handled between Hoboken and Belle Chasse, so it would be [fol. 737] a proper charge against the southwestern lines if it is a proper charge against the trunk lines.

Commr. Aitchison: We had this whole patent matter up in connection with the valuation of the Western Union and which I think we completed as far as the attempted valuation stage is concerned for the Communications Commission. Do you recall how we handled that?

Mr. Pierson: No, I didn't know about that.

Commr. Eastman: Supposing that this Hoboken was independent and in order to induce Seatrain to use its facilities had made this contract. Would that change the situation in your opinion?

Mr. Pierson: I think it would be an improper contract. I don't think any railroad has the right to make payments to another railroad because of its traffic values as a connection. I think we would get into all kinds of difficulty. I think the Commission would certainly find that an improvident arrangement. I don't know where it would lead. The effects, of course, would be tremendous and far reaching.

The Commission has held in a number of cases, particularly in the case of Atlantic Coast Line versus Cape Fear Railway, 197 I. C. C. 397, that a switching line such as the

Hoboken is merely entitled to its operating *to its operating* expenses, its taxes and a return on property value and we submit that in this particular case that the Hoboken is already obtaining all that it is entitled to and as the Court [fol. 738] held in the case involving the Cape Fear Railway, it is immaterial and not controlling what the trunk line connections may obtain so long as the switching carrier receives everything to which it is entitled.

Now, your decision in that case was sustained by a three judge Federal Court, Cape Fear Railways versus the U. S., the Federal Supplement, 429, 431. The decree was affirmed in the United States Supreme Court, 294 U. S. 693. The Court said this, and I think it is apropos of Mr. McCollester's position: "The question before the Commission was, not the cost to the Coast Line of its share of the transportation, but what was a proper and reasonable share of the revenue for the Cape Fear to receive. The cost to the Coast Line of its share of the transportation involved may have been a proper element to be considered in determining such division, but it was not necessarily the controlling element."

Now, that is our position in this case, that if these payments by Hoboken to Seatrain are excluded, then Hoboken is receiving all the compensation to which it is entitled, and we very seriously submit that we ought not to be saddled with the expense of $50,000 per annum for Seatrain's patent which enables it to stay in business and operate in competition with the railroads, plus a further sum of approximately $50,000 representing the supposed traffic value of Seatrain to Hoboken.

I thank you.

Commr. Eastman: Mr. McCollester?

[fol. 739] REBUTTAL OF MR. PARKER MCCOLLESTER

Mr. McCollester: First let me *to* say to avoid confusion, Mr. Pierson referred to the previous contract under which Hoboken was obligated to pay Seatrain only 40 cents a ton. Your Honors should understand that that payment was 40 cents a ton on all freight, both freight moving under lighterage free rates and freight moving under non-lighterage free rates, and that contract was changed at the time we changed our claim for divisions because we felt that it was not fair to ask the trunk lines, or was not fair to pay

for the Hoboken to pay Seatrain, for a terminal service which is not covered by the rates. Therefore the 75 cents was substituted which is applicable only on freight moving under lighterage free rates; on freight moving under non-lighterage free rates there is no payment made by Hoboken to Seatrain at all.

The Havana situation was referred to and is referred to in briefs. I think I ought to clear that up to this extent and say this: The rates of the United Railways of Havana are not lighterage free rates. All steamship lines have the expense of loading and unloading freight from cars and have to pay the railroad to switch the cars to and from the steamships. Seatrain has never asked to be put in a different position from other steamship lines, therefore, it was not in a position to ask the Havana railroad to pay it for completing a service which was not part of the Havana railroad's undertaking under its rates.

[fol. 740] Now, Mr. Eastman, in one question to Mr. Pierson indicated what I think is the proper approach to the question of this contract and that is, should this payment be considered if the Hoboken were an independent company and Seatrain and Hoboken dealt with each other at arm's length. I think that is the acid test; and I would approach the situation from that angle in this way: Seatrain has a perfect right and had a perfect right to build the ordinary break-bulk kind of a ship. Supposing it had done that, had leased the terminal, a pier at Hoboken, and had come in and said, well, now, here we are candidate to receive freight from you that is moved over the trunk lines. You have got to take it out of your cars. We will do the way the Holland American and Pan-Atlantic does. We are going to have stevedores on the pier. We will complete your obligation to unload the freight from the cars and put it in reach of our ship's tackle. We will do that with our stevedores, and you pay us what you pay the Holland American Line, 75 or 76 cents a ton.

The Hoboken would have done it, it would have been a proper arrangement to enter into. That 75 cents a ton would have been a proper element in Hoboken's costs and the trunk lines would have paid the Hoboken $1.35 per ton. Now, having started operations on that basis, Seatrain comes around and says, well, now, we have developed a new kind of ship. It gives a better service. We can take

the freight without its having to be loaded or unloaded. It will attract new shippers that haven't been able to ship [fol. 741] before. It will benefit your line. We will put it in operation and place it in our old break-bulk ships. It means that we have got to build a crane, got to have a crane there to lift the cars. It means that we have got to have a little locomotive. It means that we have got to have expert help to operate the thing. It means that we have got to pay royalties. It means that we have got to have specially built ships because they are a special kind of a ship representing much more per ton cost than the ordinary break-bulk ship. We will do all that if you will pay us—Well, we don't ask you 75 cents a ton—if you will pay us 73 cents a ton we will use those ships instead of our other ships.

Now, wouldn't that have been a proper contract and would not that 73 cents per ton have been the proper element of Hoboken's costs? We submit it would. We think that is the way you should approach the case.

Commr. Eastman: This case is submitted and will be taken under advisement. The Commission will adjourn and Division 2 will sit in argument.

(The above case submitted, as indicated.)

[fol. 742] BEFORE INTERSTATE COMMERCE COMMISSION

ORDER DISMISSING COMPLAINT—July 24, 1939

At a General Session of the Interstate Commerce Commission, held at its Office in Washington, D. C., on the 24th day of July, A. D. 1939

No. 27630

HOBOKEN MANUFACTURERS' RAILROAD COMPANY

v.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al.

This proceeding being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and said Commission having, on the date hereof, made and filed a report con-

taining its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the commission.

W. P. Bartel, Secretary. (Seal.)

[fols. 743-744] Secretary's Certificate to following paper omitted in printing.

[fol. 745] EXHIBIT "D-2"

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 28668

SEATRAIN LINES, INC., Complainant,

against

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY (George E. Hagenbuch and H. B. Stewart, Jr., Trustees), et al., Defendants

COMPLAINT

The complaint of Seatrain Lines, Inc., respectfully shows and alleges:

1. Complainant is a corporation organized and existing under the laws of the State of Delaware with its principal office at No. 39 Broadway, New York, N. Y. It is a common carrier by water operating vessels for the transportation of freight in interstate commerce between a terminal at Hoboken, New Jersey, in New York Harbor on the one hand and terminals at Belle Chasse (New Orleans, Louisiana) and Texas City, Texas, on the other hand.

[fol. 746] 2. Defendant railroads named in Appendix A attached hereto and made a part hereof, are common carriers engaged in the transportation of property wholly by railroad or partly by railroad and partly by water in interstate commerce subject to the provisions of the Interstate Commerce Act.

3. Defendants herein, with certain exceptions, were defendants in a proceeding instituted on the complaint of this complainant, entitled *Seatrain Lines, Inc.* v. *Akron, Canton*

& Youngstown Railway Company, et al., Docket No. 25727. In said proceeding the Commission by an order dated January 28, 1938, directed that the defendants,

> "• • • according as they participate in transportation of carload traffic over ocean-rail routes via the ports of New York and New Orleans between points in official territory covered by the findings in twenty-third and twenty-fifth supplemental reports in *Consolidated Southwestern Cases* on the one hand, and points in southwestern territory covered by the findings in said twenty-third and twenty-fifth supplemental reports in *Consolidated Southwestern Cases* and points in that portion of southern territory on or south of the line of the Yazoo and Mississippi Valley Railroad extending from Vicksburg, Miss., to Meridian, Miss., and on and west of the lines of the New Orleans and Northeastern Railroad extending from Meridian to Hattiesburg, Miss., and the Gulf and Ship Island Railroad from Hattiesburg to Gulfport, Miss., and points on the Louisville and Nashville Railroad extending east from Gulfport to the Alabama-Mississippi State line, on the other [fol. 747] hand, be, and they are hereby, directed and required to join with Seatrain Lines, Inc., in establishing, on or before April 15, 1938, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed by section 6 of the Interstate Commerce Act, through routes between the same points on the same classes and commodities, in carloads, via Hoboken, N. J., and Belle Chasse, La."

4. By a subsequent order dated December 23, 1940, entered on further hearing in *Seatrain Lines, Inc.* v. *Akron, Canton & Youngstown Railway Company, et al., supra*, the Commission ordered that the defendants join with complainant herein,

> "• • • in establishing, on or before May 1, 1941, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed by section 6 of the Interstate Commerce Act, joint rates applicable on less-than-carload and carload traffic over said through routes which shall not exceed the following: (a) Between points in

official and southwestern territories described in the next preceding paragraph hereof, first-class (column 100) rates which shall not exceed those between the same points prescribed in said twenty-fifth supplemental report in *Consolidated Southwestern Cases*, 222 I. C. C. 229, and increased as authorized in *Fifteen Percent Case, 1937-1938*, 226 I. C. C. 41, and other class rates and commodity rates that take percentages of first-class (column 100) rates made by applying to the first-class (column 100) rates prescribed herein the [fol. 748] same bases as provided in finding 11 of said twenty-third supplemental report in *Consolidated Southwestern Cases*, 211 I. C. C. 601, as modified by the said twenty-fifth supplemental report therein; and (b) between points in official territory and points in southern territory described in the next preceding paragraph hereof, first-class (column 100) rates which shall be the same as those from and to the same points applicable in connection with break-bulk water lines via the ports of New York and New Orleans, and other class and commodity rates that take percentages of first-class (column 100) rates made by applying to the first-class (column 100) rates prescribed herein the same percentages as are now in effect in connection with break-bulk water lines via the ports of New York and New Orleans."

The Commission further ordered the defendants according as they participate in the transportation to cease on or before May 1, 1941 from the unlawful discrimination between complainant, on the one hand, and the Southern Pacific Company (Southern Pacific Steamship Lines, Morgan Line) and the Pan-Atlantic Steamship Corporation, on the other hand, found to exist with respect to ocean-rail rates,

"and thereafter to maintain ocean-rail rates between points referred to in the next preceding paragraph in connection with complainant which shall not exceed concurrent rates between the same points in connection with the Southern Pacific Company (Southern Pacific Steamship Lines, Morgan Line) and the Pan-Atlantic Steamship Corporation via New York, N. Y., and New [fol. 749] Orleans, La., on corresponding traffic similarly packed and prepared for shipment."

5. Pursuant to and on the bases determined and prescribed by the orders of the Commission aforesaid, complainant and defendants by tariffs duly published and filed have established joint through rates, effective May 1, 1941, for the through transportation of freight in interstate commerce via the line of complainant between Hoboken, N. J., and New Orleans (Belle Chasse), La., and the lines of defendants in so far as they may participate in the particular transportation to which such rates are applicable between New York harbor points and points on and via the lines of defendants in Eastern Trunk Line, Central Freight Association, and New England territories, on the one hand, and points on and via the lines of defendants in Southern and Southwestern territories, on the other hand, all as more particularly described in the Commission's order. Typical of the tariff schedules in which said rates have been published are the following:

Supplement No. 30 to Agent W. S. Curlett's Tariff I. C. C. No. A-677;

Supplement No. 30 to Agent Julian M. King's Tariff I. C. C. No. 3;

Supplement No. 10 to Agent J. R. Peel's Tariff I. C. C. No. 3296;

Supplement No. 6 to Agent F. D. Miller's Tariff I. C. C. No. 401.

6. In anticipation of the establishment of the joint through rates just described, complainant and certain defendants in [fol. 750] Eastern Trunk Line, Central Freight Association, and New England territories endeavored to reach an agreement as to the divisions to be received by said defendants and their connections out of the joint through rates, but such efforts proved unsuccessful. As a result, there is no basis arrived at by agreement or otherwise for dividing as between complainant, on the other hand, and the defendants and their connections, on the other hand, in so far as they may participate in the transportation involved, the freight charges collected and to be collected on freight transported under the rates described herein. Complainant does not know what divisions of the freight charges under said rates the defendants participating in the transportation thereunder and collecting the freight charges thereon may choose to withhold for themselves and what proportions they may choose to pay over to complainant.

7. Accordingly, the present complaint is filed for the purpose of securing a determination by the Commission of the just, reasonable and equitable divisions of the joint through rates established pursuant to the Commission's orders described herein, to be received, (a) by the defendants in Eastern Trunk Line, Central Freight Association, and New England territories in so far as they and their connections may participate in the transportation of any shipments moving under said rates for the rail portions of the transportation between Hoboken, N. J., and the points of origin or destination on or via their respective lines; and, (b) by the defendants in Southern and Southwestern territories in so far as they, respectively, may participate in transpor-
[fol. 751] tation moving under said rates for the rail portion of the transportation involved between New Orleans (Belle Chasse), La., and the origins or destinations of the shipments on the lines of said defendants or their connections.

8. On information and belief, defendants are parties to through routes and to joint through rates for through transportation between points on the lines of the defendants in Eastern Trunk Line, Central Freight Association, and New England territories, on the one hand, and points on the lines of defendants in Southern and Southwestern territories, on the other hand, via and in connection with Pan-Atlantic Steamship Corporation, a common carrier by water operating between New Orleans, La., and New York harbor, which rates are the same or substantially the same for the transportation of the same or similar freight between the same points as the rates described in paragraph 5 hereof. Complainant is in competition with said Pan-Atlantic Steamship Corporation and has been in competition and will be in competition with other so-called break-bulk water carriers which have been or may in the future be in operation between New Orleans and North Atlantic ports and engaged, in connection with defendants, in the transportation of freight by rail and water, water and rail, and rail, water and rail over through routes under joint through rates.

9. On information and belief, in so far as defendants or any of them may participate in transportation under the rates and between the points described in paragraphs
[fol. 752] 5 and 8 hereof, their line-haul services and operations in the transportation of freight in connection with

complainant under the rates described in paragraph 5 are and will be the same or substantially the same as and involve no greater expense to the defendants than their services and operations in the transportation from and to the same points of similar freight transported in connection with Pan-Atlantic Steamship Corporation or other break-bulk water carriers under the rates described in paragraph 8 hereof.

10. Complainant through its enterprise and initiative and at its expense has developed, provided and placed at the service of the through transportation of freight via its line and the lines of defendants herein, under the rates described in paragraph 5 hereof, ships of a special type and special devices and patents, whose possession and use represent substantial investment and expense to complainant and whose use in the interchange of freight between complainant's vessels and railroad tracks connecting with the lines of defendants eliminates labor operations and expenses incident thereto, necessarily performed and incurred by defendants in the interchange of freight with the vessels of Pan-Atlantic Steamship Corporation or other break-bulk water carrier, and enables the defendants to complete their undertakings in connection with the rail portions of through transportation of freight interchanged with complainant without having to perform such operations or incur such expenses."

11. On information and belief, by reason of the facts alleged in paragraph 10 hereof, the terminal services and [fol. 753] operations performed by the defendants concerned at New York harbor and at New Orleans, respectively, on behalf of their rail connections, defendants herein, in interchanging with complainant freight moving under the rates described in paragraph 5 hereof are and will be substantially less and involve substantially less expense to said defendants than the terminal services and operations devolving upon and performed by them in interchanging similar freight at the ports of New York and New Orleans, respectively, with Pan-Atlantic Steamship Corporation or other break-bulk water carrier.

12. On information and belief, by reason of the facts alleged in paragraphs 9, 10 and 11 hereof, the rail portions between Hoboken and origins or destinations on the lines

of the defendants in Eastern Trunk Line, Central Freight Association, and New England territories and the rail portions between New Orleans and origins or destinations on the lines of the defendants in Southern and Southwestern territories of the through transportation of freight in connection with Seatrain, to which the rates described in paragraph 5 hereof are and will be applicable, are and will be substantially less and involve substantially less operations by and expense to the defendants concerned than their operations and expenses for the corresponding rail portions of through transportation of the same or similar freight in connection with Pan-Atlantic Steamship Corporation or other break-bulk water carrier under the rates described in paragraph 8 hereof, on the basis of which the divisions received by said defendants of the joint through rates described in paragraph 8 hereof have been or may hereafter [fol. 754] be agreed to or determined.

13. In view of the facts alleged in the foregoing paragraphs, the just, reasonable and equitable divisions, as required by Section 1(4) of the Interstate Commerce Act, to be received by defendants out of the joint through rates described in paragraph 5 hereof for the transportation, in so far as defendants participate therein, of freight over through routes in connection with complainant, which divisions will not unduly prefer defendants or Pan-Atlantic Steamship Corporation or other break-bulk water carrier nor unduly prejudice complainant in violation of the provisions of said Act, will be less than the divisions contemporaneously received by said defendants out of the same joint through rates for the transportation of the same or similar freight over through routes in connection with Pan-Atlantic Steamship Corporation or other break-bulk water carrier. If, furthermore, the contentions of certain defendants in other proceedings pending before the Commission under its Docket Nos. 25278 and 25878, in regard to the assumption of per diem and reclaim expense on cars interchanged with complainant should be upheld by the Commission and as a result thereof defendants or some of them should be relieved of expenses for detention of cars at the ports in connection with freight interchanged with complainant and moving under the aforesaid rates, which expenses such defendants incur in handling freight interchanged with Pan-Atlantic Steamship Corporation or other

[fol. 755] break-bulk water carrier, then the just, reasonable, equitable, non-preferential and non-prejudicial divisions to be received by defendants must be correspondingly still more below the divisions contemporaneously received by them from joint through rates for the transportation of the same or similar freight in connection with Pan-Atlantic Steamship Corporation or such other break-bulk carrier.

14. The failure of the defendants to accept, receive or retain out of the joint through rates herein described on freight transported over through routes in connection with complainant, as their divisions thereof, divisions less than their divisions of joint through rates on similar freight transported over through routes in connection with complainant's competitor, Pan-Atlantic Steamship Corporation or other break-bulk water carriers with which defendants may maintain joint through rates for through transportation via the ports of New York and New Orleans, by amounts reasonably reflecting the lesser services performed and expenses incurred by defendants in connection with the former than their services and expenses in connection with the latter and reflecting the contribution thereto of complainant in expense, enterprise and initiative, will be unlawful in violation of Sections 1(4) and 3(4) of the Interstate Commerce Act as amended by the Transportation Act, 1940.

15. The matters herein alleged were made the subject of informal complaints 170356-170357, filed with the Commission by the complainant herein on or about May 1, 1941, [fol. 756] naming as defendants certain of the defendants herein.

16. By its amended complaint in the proceeding described in paragraphs 3 and 4 hereof, Docket No. 25727, filed on or about March 6, 1934, complainant, referring to the joint through rates whose establishment was sought by the complainant, alleged that it would be unreasonable in violation of Section 1 and unjustly discriminatory and unduly prejudicial to complainant in violation of Section 3 of the Interstate Commerce Act for the defendants or any of them

> "to demand or receive * * * as their divisions of joint rates for their transportation service to and/or from the ports in connection with freight to be interchanged with complainant's line, charges higher than or as high as the charges contemporaneously demanded,

received or collected by them * * * as divisions of joint rates * * * on the same or similar freight between the same points of origin and ultimate destinations interchanged at New York Harbor and/or at New Orleans * * * with other common carriers by water, including competitors of complainant."

It was prayed that the Commisison by order require the defendants to establish and maintain "just, reasonable, nonprejudicial and non-discriminatory * * * divisions of joint rates in connection with such through routes." The Commission, however, by its report and order in said proceeding failed to make any finding or determination as prayed for with respect to the divisions to be received by defendants [fol. 757] out of the joint through rates prescribed and established pursuant to its order.

Wherefore, complainant prays that the defendants may be severally required to answer the charges herein and that after due hearing and investigation an order may be made commanding said defendants and each of them to cease and desist from the aforesaid violations of the Interstate Commerce Act and to establish and maintain just, reasonable and equitable divsions of the joint through rates now in effect between defendants and complainant as hereinbefore described which will not unduly prefer or prejudice any carrier. Complainant further prays that with respect to the freight charges collected on any shipments which may have moved on and after the date of the filing of this complaint or on and after May 1, 1941 under the rates described in paragraph 5 hereof, the defendants in so far as they participate in the transportation may be required to make readjustment with complainant of the divisions of such rates to the bases found by the Commission herein to be just, reasonable, equitable, non-preferential, and non-prejudicial and pay over to complainant any amounts retained by such defendants for themselves or their rail connections in excess of such divisions, reopening the proceeding under Docket No. 25727 solely with reference thereto if necessary to enable the Commission to require such refroactive readjustment and also combining herewith the proceedings under the informal complaints described in paragraph 15 hereof. And complainant prays for such other and further relief as

[fol. 758] the Commission may consider proper in the premises.

Respectfully submitted, Seatrain Lines, Inc., by Joseph Hodgson, Vice-President. Parker McCollester, Lord & Lord, Attorneys for Complainant, 25 Broadway, New York, N. Y.

Dated: May 15, 1941.

Originally received, date—May 16, 1941.
Returned for correction, date—May 20, 1941.

[fol. 759] State of New York,
County of New York, ss:

Joseph Hodgson, being duly sworn, deposes and says:

That he is Vice-President of Seatrain Lines, Inc., complainant in the above-entitled proceeding; that he has read the foregoing complaint and knows the contents thereof; that the same are true as stated, except as to matters and things, if any, stated on information and belief, and that as to those matters and things, he believes them to be true.

Joseph Hodgson.

Subscribed in my presence and sworn to before me, by the affiant above named this 15th day of May, 1941.

Joseph Paul Catera, Notary Public Bronx Co. Clk's No. 136, Reg. No. 120C42. Cert. filed in N. Y. Co. Clk's No. 556, Reg. No. 2C348. Commission expires March 30, 1942.

[fol. 760] Appendix A

Defendants in Eastern Trunk Line and Central Freight Association Territories

The Akron, Canton & Youngstown Railway Company (George E. Hagenbuch and H. B. Stewart, Jr., Trustees).
Arcade and Attica Railroad Corporation.
Baltimore and Eastern Railroad Company.
The Baltimore and Ohio Railroad Company.
Bath and Hammondsport Railroad Company.

Bessemer and Lake Erie Railroad Company.
Cambria and Indiana Railroad Company.
The Central Railroad Company of New Jersey (Shelton Pitney and Walter P. Gardner, Trustees).
The Champlain and St. Lawrence Railroad Company (Canadian National Railway Company, Lessee).
Chesapeake Western Railway.
The Chesapeake and Ohio Railway Company.
Chestnut Ridge Railway Company.
Chicago and Erie Railroad Company.
Cornwall Railroad Company.
Coudersport and Port Allegany Railroad Company.
Cumberland and Pennsylvania Railroad Company.
[fol. 761] The Dansville and Mount Morris Railroad Company.
The Delaware and Hudson Railroad Corporation.
The Delaware, Lackawanna and Western Railroad Company.
Detroit, Toledo and Ironton Railroad Company.
Erie Railroad Company (Robert E. Woodruff and John A. Hadden, Trustees).
Genesee and Wyoming Railroad Company.
Greenwich & Johnsonville Railway Company.
Hoboken Manufacturers Railroad Company.
The Ironton Railroad Company (Lehigh Valley Railroad Company and Reading Company, Lessees).
Lake Erie, Franklin & Clarion Railroad Company.
The Lehigh and Hudson River Railway Company.
Lehigh and New England Railroad Company.
Lehigh Valley Railroad Company.
The Long Island Rail Road Company.
The Lorain & West Virginia Railway Company.
Maryland and Pennsylvania Railroad Company.
The Monongahela Railway Company.
Montour Railroad Company.
Morristown & Erie Railroad Company.
The New Jersey and New York Railroad Company (Robert E. Woodruff and John A. Hadden, Trustees).
The New York and Long Branch Railroad Company.
The New York Central Railroad Company.
The New York, Chicago and St. Louis Railroad Company.
The New York Connecting Rail Road Company.

[fol. 762] New York, Ontario and Western Railway Company (Frederic E. Lyford, Trustee).

New York, Susquehanna and Western Railroad Company (Walter Kidde, Trustee).

Norfolk and Western Railway Company.

Northampton and Bath Railroad Company.

The Northern Ohio Railway Company (George E. Hagenbuch and H. B. Stewart, Jr., Trustees).

Norwood & St. Lawrence Railroad Company.

Pennsylvania and Atlantic Railroad Company.

Pennsylvania and Atlantic Railroad Company (South of Hightstown, N. J., to Pemberton, N. J., Inc.), (The Union Transportation Company, Lessee).

The Pennsylvania Railroad Company.

Pennsylvania-Reading Seashore Lines.

The Pittsburgh & Shawmut Railroad Company.

The Pittsburgh and Lake Erie Railroad Company.

The Pittsburgh & West Virginia Railway Company.

Pittsburgh, Chartiers & Youghiogheny Railway Company.

The Pittsburgh, Lisbon & Western Railroad Company.

Rahway Valley Company (Railway Valley Company, Lessee).

Raritan River Rail Road Company.

Reading Company.

Richmond, Fredericksburg and Potomac Railroad Company.

South Brooklyn Railway Company.

Southern Railway Company.

The Staten Island Rapid Transit Railway Company.

Susquehanna and New York Railroad Company.

[fol. 763] Tionesta Valley Railway Company.

The Toronto, Hamilton and Buffalo Railway Company.

The United States and Canada Rail Road Company (Canadian National Railway Company, Lessee).

The Virginian Railway Company.

Wabash Railway Company (Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers).

Western Maryland Railway Company.

Wharton and Northern Railroad Company.

The Wheeling and Lake Erie Railway Company.

Wilkes-Barre and Eastern Railroad Company (Joseph P. Jennings, Trustee).

DEFENDANTS IN NEW ENGLAND TERRITORY

Bangor and Aroostook Railroad Company.
Boston and Maine Railroad.
Canadian National Railway Company.
Canadian National Railways.
Canadian Pacific Railway Company.
Central Vermont Railway, Inc.
The Clarendon and Pittsford Railroad Company.
Maine Central Railroad Company.
Montpelier and Wells River Railroad.
Moshassuck Valley Railroad Company.
The Narragansett Pier Railroad Company.
[fol. 764] The New York, New Haven and Hartford Railroad Company (Howard S. Palmer, James Lee Loomis, Henry B. Sawyer, Trustees).
Portland Terminal Company.
Quebec Central Railway Company.
Rutland Railroad Company (S. G. Morphy, Receiver).
The St. Johnsbury & Lake Champlain Railroad Company.
Wood River Branch Railroad Company.

DEFENDANTS IN SOUTHWESTERN TERRITORY

Angelina & Neches River Railroad Company.
The Atchison, Topeka and Santa Fe Railway Company.
The Beaumont, Sour Lake & Western Railway Company (Guy A. Thompson, Trustee).
Burlington-Rock Island Railroad Company.
The Chicago, Rock Island and Pacific Railway Company (Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees).
DeQueen and Eastern Railroad Company.
El Dorado and Wesson Railway Company.
Fort Worth and Denver City Railway Company.
Galveston, Houston and Henderson Railroad Company.
Gulf, Colorado and Santa Fe Railway Company.
Houston and Brazos Valley Railway Company (Guy A. Thompson, Trustee).
Houston Belt & Terminal Railway Company.
International-Great Northern Railroad Company (Guy A. Thompson, Trustee).
[fol. 765] Jefferson Southwestern Railroad Company.
The Kansas City Southern Railway Company.
Kansas, Oklahoma & Gulf Railway Company.

Louisiana & Arkansas Railway Company.
Missouri-Kansas-Texas Railroad Company.
Missouri-Kansas-Texas Railroad Company of Texas.
Missouri Pacific Railroad Company (Guy A. Thompson, Trustee).
Murfreesboro-Nashville Railway Company.
New Orleans and Lower Coast Railroad Company.
New Orleans, Texas & Mexico Railway Company (Guy A. Thompson, Trustee).
Oklahoma & Rich Mountain Railroad Company.
The Orange & Northwestern Railroad Company (Guy A. Thompson, Trustee):
Panhandle and Santa Fe Railway Company.
Paris and Mt. Pleasant Railroad Co.
Quanah, Acme & Pacific Railway Company.
Red River and Gulf Railroad.
Rio Grande and Eagle Pass Railway Company.
Sabine & Neches Valley Railway Company.
The St. Louis, Brownsville and Mexico Railway Company (Guy A. Thompson, Trustee).
St. Louis, San Francisco and Texas Railway Company.
St. Louis-San Francisco Railway Company (J. M. Kurn and John G. Lonsdale, Trustees).
St. Louis Southwestern Railway Company (Berryman Henwood, Trustee).
St. Louis Southwestern Railway Company of Texas (Berryman Henwood, Trustee).
[fol. 766] San Antonio, Uvalde & Gulf Railroad Company (Guy A. Thompson, Trustee).
Southern Pacific Company.
Texas and New Orleans Railroad Company.
The Texas and Pacific Railway Company.
Texas City Terminal Railway Company.
The Texas Mexican Railway Company.
Waco, Beaumont, Trinity & Sabine Railway Company (Paul T. Sanderson, Receiver).
Wichita Falls and Southern Railroad Company.
The Wichita Valley Railway Company.

DEFENDANTS IN SOUTHERN TERRITORY

Bonhomie and Hattiesburg Southern Railroad Company.
Gulf and Ship Island Railroad Company.
Gulf, Mobile and Ohio Railroad Company.

Illinois Central Railroad Company.
Louisville and Nashville Railroad Company.
Mississippi Central Railroad Company.
New Orleans and Northeastern Railroad Company.
New Orleans Public Belt Railroad.
The Yazoo and Mississippi Valley Railroad Company.

[fol. 767] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE RECORD TO BE PRINTED—Filed April 29, 1943

Come now the appellants and say that they will rely in brief and oral argument before this Court on the points made in their assignment of errors on their appeal in the above-entitled cause.

Appellants further state that the entire record in this cause, as filed in this Court pursuant to praecipe for transcript of record, is necessary for consideration of the points specified above, with the exception of the following exhibits introduced before the Interstate Commerce Commission:

MAP EXHIBITS Nos. 1 and 3;

EXHIBITS 11 and 19, which also appear as Exhibits C and D to the Petition of Plaintiff before the United States District Court; and

EXHIBITS (originals, *not revised*) Nos. 37, 38, 39, 40, and 41.

[fol. 768] Daniel W. Knowlton, Chief Counsel; E. M. Reidy, Assistant Chief Counsel, For the Interstate Commerce Commission. Willis T. Pierson, Thomas P. Healy, Francis R. Cross, Joseph Eshelman, R. Aubrey Bagley, Counsel for Intervening Railroad Appellants.

Service of copy of the foregoing Statement of Points to be Relied Upon and Designation of the Record to be Printed acknowledged this 28th day of April, 1943.

John F. Drewer, Counsel for Hoboken Manufacturers Railroad Company, Appellee.

[fol. 769] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1943

No. 43

INTERSTATE COMMERCE COMMISSION, et al., Appellants,

vs.

HOBOKEN MANUFACTURERS' RAILROAD COMPANY

ORDER NOTING PROBABLE JURISDICTION—May 3, 1943

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

[Endorsed on Cover]: File No. 47,427 D. C. U. S., New Jersey, Term No. 43. Interstate Commerce Commission, The Baltimore and Ohio Railroad Company, et al., Appellants, vs. Hoboken Manufacturers' Railroad Company Filed April 15, 1943. Term No. 43 O. T. 1943.

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CLERK

No. 926

In the Supreme Court of the United States

OCTOBER TERM, 1942

INTERSTATE COMMERCE COMMISSION, THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL., APPELLANTS

v.

HOBOKEN MANUFACTURERS' RAILROAD COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY

STATEMENT AS TO JURISDICTION

In the District Court of the United States for the District of New Jersey

Civil Action No. 1100

HOBOKEN MANUFACTURERS' RAILROAD COMPANY, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

and

INTERSTATE COMMERCE COMMISSION, THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL., INTERVENING DEFENDANTS

JURISDICTIONAL STATEMENT BY DEFENDANTS UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

The defendants-appellants respectfully present the following statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment or decree in the above-entitled cause sought to be reviewed.

323 48—43——1

A. Statutory provisions

The statutory provisions believed to sustain the jurisdiction are:

U. S. C., Title 28, Section 47a [Act of March 3, 1911, c. 231, sec. 210, 36 Stat. 1150; as amended by Urgent Deficiencies Act of October 22, 1913; c. 32, 38 Stat. 220].

U. S. C., Title 28, Section 41 (28) [Act of June 18, 1910, c. 309, 36 Stat. 539; as amended March 3, 1911, c. 231, section 207, 36 Stat. 1148; October 22, 1913, c. 32, 38 Stat. 219].

U. S. C., Title 28, Section 44 [Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, section 1, 43 Stat. 938].

U. S. C., Title 28, Section 47 [Act of October 22, 1913, c. 32, 38 Stat. 220].

U. S. C., Title 28, Section 345 [Act of March 3, 1891, c. 517, section 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191, section 35, 31 Stat. 85; April 30, 1900, c. 339, section 86, 31 Stat. 158; March 3, 1909, c. 269, section 1, 35 Stat. 838; March 3, 1911, c. 231, sections 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, section 2, 38 Stat. 804; February 13, 1925, c. 229, section 1, 43 Stat. 938].

B. The statute of a State, or the statutes or treaty of the United States, the validity of which is involved

The validity of a statute of a state, or of a statute or treaty of the United States, is not involved.

C. Date of the judgment or decree sought to be reviewed and the date upon which the application for appeal was presented

The decree sought to be reviewed was entered on January 8, 1943. The petition for appeal was presented and allowed on March 8, 1943, together with an assignment of errors.

D. Nature of case and of rulings below

This is an appeal from a final decree of the District Court of the United States for the District of New Jersey, entered January 8, 1943, setting aside an order of the Interstate Commerce Commission dated July 24, 1939, in Docket No. 27630, *Hoboken Manufacturers Railroad Company v. Akron, Canton & Youngstown Ry. Co., et al.*, 234 I. C. C. 114, which dismissed the complaint of the Hoboken therein upon a finding that Hoboken's divisions out of joint class and commodity rail rates applicable on traffic interchanged by it with Seatrain Lines, Inc., are not unjust, unreasonably low, inequitable, or unduly prejudicial to Hoboken, and that the corresponding divisions received by the defendant rail lines are not unjust, unreasonably high, inequitable, or unduly preferential of them. The Commission's decision under review was made after extensive hearings concerning which the District Court said: "There is here no contention that the proceedings before the Commission were not fair and adequate in every way."

The petition in this case was filed by the Hoboken with said court on August 27, 1940, under and pursuant to the provisions of Section 41 (28) and Sections 43 to 48 of Title 28, U. S. Code, against the United States of America, and pursuant to the provisions of 28 U. S. C., Section 45a, the Interstate Commerce Commission and a number of the Eastern trunk line railroads intervened as defendants.

Seatrain acquired control of complainant April 26, 1932, and owns all shares of complainant's capital stock, except 5 directors' qualifying shares. All of complainant's principal officers are officers of Seatrain, and six of complainant's seven directors are also directors of Seatrain. 234 I. C. C. 114, 115.

To provide it a terminal, and for the loading of cars into its vessels and for unloading them therefrom, Seatrain has and maintains a crane at the pier of the Hoboken where it docks.

On November 21, 1932, the Hoboken entered into an agreement to make certain payments to Seatrain on each ton of freight which it switched between its trunk line connections and Seatrain. (Exhibit C to the petition of complainant in the District Court.) Subsequently on December 31, 1936, the Hoboken filed its complaint with the Commission, and thereafter it entered into a new agreement with Seatrain Lines, Inc., dated February 24, 1937 (Appendix D to complainant's

petition before the District Court), in which it agreed to pay to Seatrain 73 cents per ton on all freight received from or delivered to its trunk line connections and delivered to or received from Seatrain which moved under the railroad's so-called "lighterage free" rates, by which is meant certain long-haul rates which apply to numerous stations grouped with New York City and which also cover deliveries to points within the lighterage-free limits of New York Harbor. When under such rates freight is to be delivered to or received from water lines serving New York Harbor, the rates cover such rail or rail and marine (lighter or float) service, and such loading or unloading of cars as may be necessary in the individual instance to deliver freight or receive it alongside ship within reach of ship's tackle.

Seatrain's car crane corresponds to the ordinary ship's cargo mast and sling, and is so regarded by it. Under the agreements of November 21, 1932, and February 24, 1937, Seatrain and the Hoboken agreed that cars should be interchanged between them at the cradle of the crane on the dock alongside Seatrain's vessels.

On traffic switched by the Hoboken between its connecting trunk lines and Seatrain which moves on non-lighterage-free rates (meaning those short-haul rates or rates on particular commodities which are not entitled to the lighterage-free privilege) the Hoboken under its agreement of February

24, 1937, makes no payments to Seatrain, although its physical service in respect thereof is identical with that which it performs on traffic moving under lighterage-free rates, as to which under said agreement the Hoboken pays Seatrain 73 cents per ton.

The Hoboken's divisions which it receives from the trunk lines have been and are adequate, reasonable, and equitable, unless the Hoboken is correct in its contention that it is entitled through an increase in its divisions to recoup from the trunk lines the payments which it makes to Seatrain in respect of freight moving on lighterage-free rates.

The Commission found that the payments which the Hoboken makes to Seatrain in respect of such traffic have no relation whatsoever to the performance of any transportation service which in the case of Seatrain traffic devolves upon the railroads under their lighterage-free rates.

The principal basis of the complaint filed in the District Court was that the Commission in determining the reasonableness of the divisions of the joint rates received by the Hoboken Manufacturers Railroad Company, did not include therein anything in respect of the payments which the Hoboken makes under its contract with Seatrain of February 24, 1937, effective March 1, 1937. The Commission determined that the patented devices of the Seatrain enabled that carrier

to engage in its own particular type of transportation as a common carrier by water, and that as the railroad's duty to deliver freight ended at the crane on the dock adjacent to the vessels of the Seatrain, and as the Hoboken itself performed all the service incident to making delivery of cars to, or to receiving them from, Seatrain, the payments which it made to Seatrain did not cover all or any part of the rail service actually performed within the scope of the railroad's obligations under their lighterage-free rates. The District Court sustained the holding of the Commission that transportation ended at the dock as being administrative in character, and, being supported by substantial evidence, it was binding upon the court.

The District Court recognized this rule of law as a matter of principle, but in practice acted contrary to it by substituting its own judgment for that of the Commission as to what elements and considerations could properly be considered as within the scope of the railroad's obligations under their lighterage-free rates to deliver freight to or receive it from Seatrain.

After sustaining the Commission's holding that transportation under the lighterage-free rates ended at the crane on the dock adjacent to the vessels of Seatrain, the court held that it was the duty of the Commission in determining reason-

able, equitable, nonprejudicial, and nonpreferential divisions to give consideration to the payments by Hoboken to Seatrain which were without relation to the transportation actually performed under such rates.

The court's decree returning the case to the Commission for further findings would require the Commission to take action beyond the scope of the issues in the case before it by prescribing divisions, virtually as between the railroads and Seatrain, of rail rates which did not involve Seatrain or its service, something that relates to a matter beyond the scope of the rates which the Commission was asked to divide.

The question presented by this appeal is a substantial one. It involves an interpretation and application of sections 1 (4) and 15 (6) of the Interstate Commerce Act in relation to the division of joint rates. Aside from the local situation immediately affected, the decision of the lower court, if allowed to stand, would establish principles relating to, and impinging upon, a valid exercise of the administrative process, which would have a far-reaching effect. Since the decision appears contrary to well-recognized principles of judicial review in such matters, it is important that the Supreme Court review this decision.

E. Cases sustaining the Supreme Court's jurisdiction of the appeal

United States v. *Chicago, Milwaukee, St. Paul & Pacific R. R. Co.*, 294 U. S. 499;

United States v. *Baltimore & Ohio Railroad Company*, 293 U. S. 454;

Florida v. *United States*, 282 U. S. 194;

Beaumont, Sour Lake & Western Railway Company v. *United States*, 282 U. S. 74;

Ann Arbor Railroad Company v. *United States*, 281 U. S. 658;

Louisville & Nashville R. R. Co. v. *United States*, 238 U. S. 1;

Interstate Commerce Commission v. *Union Pacific Ry. Co.*, 222 U. S. 541;

New England Divisions Case, 261 U. S. 184;

Alton R. Co. v. *United States*, 287 U. S. 229;

United States v. *Lowden*, 308 U. S. 225;

Hudson & Manhattan R. Co. v. *United States*, 313 U. S. 98; and

Interstate Commerce Commission v. *Railway Labor Executives Association*, 315 U. S. 373.

F. Opinion and decree of the District Court

Appended to this statement are copies of the opinion, findings of fact, conclusions of law, and the final decree of said court sought to be reviewed.

We, therefore, respectfully submit that the Supreme Court of the United States has jurisdiction of the appeal.

Dated March 8, 1943.

DANIEL W. KNOWLTON,
Chief Counsel.

E. M. REIDY,
Assistant Chief Counsel,
For the Interstate Commerce Commission.

WILLIS T. PIERSON,
THOMAS P. HEALY,
FRANCIS R. CROSS,
JOSEPH F. ESHELMAN,
Of Counsel, For Intervening Railroad Defendants.

COLLINS & CORBIN,
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In the United States District Court for the District of New Jersey

Civil Action No. 1100

HOBOKEN MANUFACTURERS' RAILROAD COMPANY, PLAINTIFF

v.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION ET AL., DEFENDANTS

Before BIGGS, Circuit Judge, and FAKE and SMITH, District Judges. BIGGS, Circuit Judge.

The plaintiff, Hoboken Manufacturers' Railroad Company, in the case at bar seeks to set aside an order of the Interstate Commerce Commission, dated July 24, 1939, finding, after full hearing, that the divisions received by it out of joint class and commodity rates on traffic interchanged by it with Seatrain Lines, Inc., were not unjust or inequitable.

The plaintiff is a short switching railroad which runs along the water front of Hoboken, New Jersey. It connects with the Erie Railroad and through the Erie with other trunk line railroads. It exchanges freight and cars with those railroads. The Hoboken Railroad (to which we

will refer hereafter as "Hoboken") also serves industries and steamship piers along the Hoboken water front and, in particular, the pier of Seatrain Lines, Inc.

The defendant is the United States of America. The Interstate Commerce Commission was made a defendant, pursuant to the provisions of Sections 212 and 213 of the Judicial Code, as amended, 38 Stat. 220, 28 U. S. C. A. § 47 (a). Many of the eastern trunk line carriers intervened, and the argument for these carriers has been made by the Baltimore & Ohio Railroad Company.

This court has jurisdiction, pursuant to the provisions of the Acts of June 10, 1910 and October 22, 1913, the Commerce Act and the Urgent Deficiencies Act, as set forth in 38 Stat. 219, 28 U. S. C. A. § 41 (28) and 38 Stat. 219–220, 28 U. S. C. A. §§ 43–48 inclusive. The suit at bar was brought to review a decision and order of the Commission dismissing a complaint brought by Hoboken, to secure a determination by the Commission of the just, reasonable, and equitable divisions of the joint through rates on lighterage-free freight interchanged by Hoboken with Seatrain Lines, Inc.

Seatrain Lines, Inc. (hereinafter referred to as "Seatrain") operates three ships. These are fast fourdecked vessels, carrying standard gauge railroad tracks. Two of the vessels can carry one

hundred freight cars each and the third ninety-five cars. The vessels operate between Hoboken, New Jersey and Belle Chasse in Louisiana, via Havana, Cuba. When a Seatrain ship is put in position at its dock, it is next to a "cradle" which, by means of a large overhead crane, lifts the loaded freight car from the dock and carries it through one of a number of large hatches on the ship to one of the tracks within the vessel. The tracks of the cradle fit the tracks on ship, and the car is then pushed off the cradle to its place on the ship by a special little engine. There is one cradle for each track on each deck of the vessel and, when the loading of each deck is accomplished, the cradles are left in place flush with the deck, each cradle closing a hatch. In taking the car from ship to shore the process is reversed. By the use of the Seatrain method, goods and merchandise may be transported from shore to ship and from ship to shore without breaking bulk, and the necessity of loading and unloading the freight is eliminated.

This method of interchange is used between Seatrain and Hoboken. Approximately 40% of the cars interchanged by Hoboken with Seatrain move under lighterage-free rates, and about 60% under non-lighterage-free rates. With Seatrain freight regardless of how it is billed, whether as lighterage-free freight or non-lighterage-free freight, it is handled by Hoboken in precisely the same physical fashion.

When freight is shipped on lighterage-free rates, the carrier undertakes to deliver the freight at the foot of ship's tackle without any charge for lighterage.[1] The term lighterage is used to describe all those steps taken to deliver freight from a railroad car to a point where the ship's tackle may lift it to the ship. Lighterage, therefore, is the loading, unloading, and transfer of freight between a car and a ship's side. In the case at bar we are concerned only with the lighterage-free rate, and how it shall be divided between Hoboken and the trunk line carriers.

The Commission has established a through rate of $7.00 per ton, to shipside. On break-bulk lighterage-free freight the trunk lines receive for their share $5.65, and Hoboken receives $1.35. Of this $1.35, 60¢ goes to Hoboken as compensation for switching charges and 75¢ goes to it as reimbursement for the cost of loading, unloading, and transferring freight between the freight cars and shipside. On Seatrain freight, using that phrase to describe freight contained in cars lifted on the cradle to or from the Seatrain ship and in which the bulk is not broken, of the $7.00 through-rate to shipside, the trunk lines have refused to allot to Hoboken more than the sum of 60¢ for

[1] Lighterage has been defined as loading, unloading, or transportation by means of a lighter. The word came into use at a time when docking facilities frequently were insufficient to accommodate large ships which therefore stood out in the harbor. Merchandise was carried to them by smaller vessels or lighters.

its switching charges, retaining the 75¢, which was saved due to elimination of loading and unloading charges. Hoboken claims that upon Seatrain freight the trunk lines should receive $5.65 as their share and Hoboken should receive 60¢ for switching as usual, and 75¢ to reimburse it for payments made to Seatrain for the right to use the special Seatrain labor-saving and time-saving facilities. Hoboken contends that, while it may not be entitled to the full sum of 75¢ in this connection, it is entitled to some part of the 75¢ for the facilities which it has made available which permit shipping by sea without breaking bulk.[2]

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[2] We have used these break-down figures on the $7.00 through-rate because the parties really have argued their case upon this basis. There have been some slight changes in the break-down figures, but these are small. We think that if we employed the changed figures in this opinion confusion might result. We will refer to them briefly in this note.

The divisional allowance to Hoboken, prior to March 28, 1938, the effective date of the decision of the Commission in *Ex Parte 123, Fifteen Percent Case*, 1937–1938, 226 I. C. C. 41, was $1.35 per ton, which amount represented 60¢ for switching and 75¢ for loading or unloading the cars. The $1.35 division was increased under *Ex Parte 123*, either 5 or 10%, depending upon the commodities transported. See pages 37–39, testimony before the Commission, and Exhibit 2.

On car-load shipments loaded or unloaded by the shipper or consignee at their expense, the divisional allowance to Hoboken prior to *Ex Parte 123*, was 60¢ per ton, and subsequent to *Ex Parte 123*, either 63¢ or 66¢ per ton. See the same pages and the same Exhibit.

No loading or unloading of Seatrain freight being necessary to place or receive it at shipside, the trunk line railroads

The contentions of Hoboken must be examined in the light of the corporate relations existing between Seatrain and Hoboken. Prior to 1932, Seatrain had begun negotiations with Hoboken for the use of the terminal facilities. Seatrain then learned that Hoboken was insolvent and bought up all of its stock at auction. Seatrain now owns all of the 4000 shares with the exception of five qualifying directors' shares. Six of Hoboken's seven directors are also directors of Seatrain. Four of Hoboken's eight officers are officers of Seatrain.

Graham M. Brush, the president of Seatrain and of Hoboken, is the inventor of the Seatrain ship and of the appliances for loading and unloading freight cars into and out of such ships. He assigned his patents to Railway Transports, Inc., a corporation in which he is one of 700 shareholders. The extent of his control of this

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paid Hoboken on such freight a divisional allowance of 60¢ a ton prior to March 28, 1938, and 63¢ or 66¢ a ton after that date.

The 63¢ or 66¢ allowances (See Exhibit 36) represent an increase of 215 and 230 percent, respectively, over 20¢ per ton allowance in effect prior to July 1, 1918. If Hoboken's original divisional allowance of 20¢ had been increased in accordance with the general rate increases and reductions authorized by the Commission, its present allowances would be 38, 40, or 42 cents, varying as to commodities and territorial application of the rates. Prior to *Ex Parte 123* a compromise settlement was reached with the trunk line, establishing Hoboken's division at 60¢ per ton.

corporation was not disclosed. Railway Transports, Inc., gave Seatrain an exclusive license under the patents, for which Seatrain pays as royalty the sum of approximately $50,000 per annum. The patents expire in 1944.

Hoboken and Seatrain entered into a contract dated November 21, 1932 (subsequent to the purchase of Hoboken's stock by Seatrain, although negotiations had been commenced prior to the purchase), which provided, in respect to freight transported by Hoboken and consigned for delivery to Seatrain, that delivery should be considered to be completed by Hoboken when the cars had been placed upon the cradle. Under the contract Seatrain had the right, upon its request, to have Hoboken place the cars at some convenient point near the cradle, and Seatrain itself was then to place the cars on the cradle as Hoboken's agent. By other provisions of the contract Hoboken authorized Seatrain, as its agent, to take the cars from the cradle. The contract provided also that Hoboken would pay Seatrain 40¢ per ton of freight (other than coal) loaded into, or discharged from, the Seatrain ships in cars.

By a later contract between Hoboken and Seatrain, dated February 24, 1937, effective as of March 1, 1937, it was provided that Hoboken would pay Seatrain 73¢ per ton (subject to possible revisions because of increases or decreases

in the scale of longshoremen's wages) on all freight interchanged between them shipped on lighterage-free rates, and that Hoboken would pay Seatrain nothing on freight shipped on non-lighterage-free rates. Under this contract, Seatrain does not move the cars to or from the cradle. This service is performed by Hoboken.

The justification asserted by Hoboken for the sums paid by it to Seatrain is that, as the Seatrain appliances make it unnecessary to load or unload freight, the trunk line railroads are relieved of the expense of 75¢ per ton for which they ordinarily reimburse Hoboken when freight is moved under lighterage-free rates to or from water carriers other than Seatrain. Hoboken claims that since the trunk line carriers get these advantages by reason of Hoboken's contract with Seatrain, the savings effected should accrue to Hoboken and not to the trunk line carriers.

Under the contract of 1937, Seatrain charges Hoboken 73¢ for the Seatrain devices when used on lighterage-free freight. This would leave Hoboken 2¢ out of the 75¢ which Hoboken alleges it should receive under a new division of the $7.00 through-rate. If Hoboken's contentions were to prevail, it would be able to operate at a profit. Otherwise, Hoboken will operate (as it has in the past) at a loss. The Commission indicated, however, that if Hoboken had not made the 73¢ payment it would have operated at a profit, averaging the years 1936 and 1937.

Part of the Commission's report is devoted to a discussion of the various elements which compose Hoboken's necessary operating expenses and its income. Seatrain leases the Seatrain pier and slip from Hoboken. The rental is based on Hoboken's expenditures. These include rent, taxes, insurance, depreciation, repairs, maintenance and dredging, plus an estimated return of 6% on Hoboken's investment in the property. The crane which handles the cradles also is leased by Seatrain from Hoboken. Its original cost was about $85,000. The rental for all of the foregoing for the year beginning March 1, 1937, the effective date of the later contract was about $33,000.

It appears from the Commission's report that Hoboken paid Seatrain $110,000 in 1936, pursuant to the provisions of the 1932 contract; that in 1937 Hoboken paid Seatrain approximately $100,000. The cars that moved between Hoboken and Seatrain under lighterage-free rates were about 50% of all the cars moving between Seatrain and Hoboken. It follows that Hoboken paid Seatrain nothing for about 50% of the cars, viz, those that moved under non-lighterage-free rates.

The Commission concludes that the record before it warrants the finding that the former division of 60¢ and the present divisions of 63¢ and 66¢ a ton on lighterage-free freight are sufficient to cover the cost of the services performed by Hoboken and also constitutes a reasonable return on the property owned or used by Hoboken in

performing such service. The Commission goes on to say, and we think correctly, that the service that the railroads hold themselves out to perform under the lighterage-free rates includes the unloading of inbound cars and the placing of the lading within reach of the ship's tackle and a corresponding but reverse service in connection with outbound freight. Placing the cars upon the cradle or removing them therefrom satisfied all those requirements.

The Commission dismissed the complaint holding that the 75c. charge was not properly a transportation charge and that it could not be justified as a legitimate factor contributing to the efficiency of Hoboken's operation.

Hoboken has appealed to this court alleging that the order of the Commission was based upon errors in law in disregarding the contract between Hoboken and Seatrain, that the findings of the Commission are not supported by evidence, and that the order results in a confiscation of Hoboken's property without due process of law.

We have jurisdiction to review the order of the Commission. The Commission's determination upon matters of fact are binding, but the court

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That the Commission dismissed the complaint instead of entering a positive order is immaterial. The effect of the action is to establish the current practice as the approved division. *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125; *Alton R. Co.* v. *United States*, 287 U. S. 229; *B. & O. R. Co.* v. *United States*, 288 U. S. 349, 358.

may set aside the order if the parties were not accorded a fair and complete hearing, or if the findings of the Commission are not supported by evidence, or if the rate established by the Commission results in a deprivation of property without due process of law. *Interstate Commerce Commission* v. *Union Pacific R. R. Co.*, 22 U. S. 541, 547. *Florida East Coast Ry. Co.* v. *United States*, 234 U. S. 167; *St. Joseph Stockyards Co.* v. *United States*, 298 U. S. 38, 51.[1] There is here no contention that the proceedings before the Commission were not fair and adequate in every way.

Admittedly the Commission as the trier of fact must determine the point at which the transportation service of the railroad is complete and, if the Commission's finding in this respect is supported by substantial evidence, the parties and this court are bound upon it. The question of where transportation by rail ends is an administrative question: *Atchison Ry.* v. *United States*, 295 U. S. 193, 201; *United States* v. *American Sheet and Tin Plate Company*, 301 U. S. 402; *United States* v. *Pan American Petroleum Corporation*, 304 U. S. 156. Even though we might reach a different conclusion, if there is evidence to support the Commission's findings, its order

[1] But see the concurring opinion of Mr. Justice Brandeis asserting the finality of administrative findings notwithstanding questions of constitutionality. 298 U. S. 38, 73.

must be sustained. *New England Divisions Case,* 261 U. S. 184, 204; *Seaboard Airline Ry. Co.* v. *United States,* 254 U. S. 57, 62. The finding by the Commission that rail transportation ends at the cradle when Hoboken has put the car consigned for Seatrain upon it and begins at the cradle when the movement is reversed is fully supported by the evidence. The contract of November 21, 1932, between Hoboken and Seatrain expressly so provided, and the contract of February 24, 1937, now in force between Hoboken and Seatrain, makes no substantial change in this respect although Hoboken makes Seatrain its agent to put the cars upon and take them off the cradle. Since, as the Commission determined, transportation ends at the cradle, Hoboken completes its obligation under the lighterage-free tariff when it delivers the cars to the cradle. The Commission, therefore, held that the payments by Hoboken to Seatrain do not constitute a legitimate transportation cost. Upon this finding, supported by evidence, its judgment is final. *United States* v. *Pan American Petroleum Corporation,* 304 U. S. 156.

In its report the Commission found that, "While, therefore, the payments are not made for any service which the rail lines perform under the lighterage-free rate, there is a remaining question whether such payments may be justified, in any way and to any extent as compensa-

tion properly payable to Seatrain for the savings which it has accomplished for the rail lines by its new method of transfer. The new method of transfer puts the connecting rail lines to less expense under the lighterage-free rates than the old method. It may be argued, therefore, that they would be justified in making any payments that might be necessary for the purpose of inducing the establishment of the new method of transfer provided they were left with a net saving. There is no evidence, however, that payments were or are necessary for this purpose. The contract between Seatrain and complainant, to which defendant rail lines are not parties, is not evidence to this effect, in view of the control which Seatrain exercises over complainant. No such payments have, so far as the record shows, been exacted or obtained by Seatrain from an independent rail connection. There is ample reason to conclude, also, that the improved method of transfer is only an incident to the Seatrain plan of transportation, and that this plan has sufficient advantages to impel its use and promotion by Seatrain regardless of any contributory payments from rail connections."

Admittedly, the contract between Seatrain and Hoboken should be examined carefully because of the corporate relationship. *Lindeheimer* v. *Illinois Telephone Co.*, 292 U. S. 151, 156; *Pittsburgh & W. V. Ry. Co.* v. *United States*, 41 F. (2nd)

806, 811. Also Seatrain does not exact payments from the railroads with which it interconnects at Havana and New Orleans. Hoboken asserts, however, that if Seatrain were to demand such payments from the United Railways of Havana, the latter's revenue from traffic with Seatrain would be less than that received from its traffic with break-bulk carriers. The location of the terminal at Belle Chasse saves Seatrain approximately 17 miles of travel in each direction and this, according to Hoboken, is sufficient to compensate for lack of contributory payments. The Commission did not determine the validity of the contract, but dismissed the entire question of the contract payments on the theory that Hoboken would receive the same intereonnecting facilities irrespective of the payments.

However, the issue at bar is not predicated solely upon Hoboken's legitimate costs. The entire inquiry should be directed to securing "a fair and equitable division" of the rates. Conceding *arguendo* that the contract between Hoboken and Seatrain does not constitute a valid obligation to be considered in determining Hoboken's costs, that does not necessarily mean that there is no obligation upon Hoboken to make some payment for the interconnection which saves Hoboken the labor and costs of loading and unloading freight. The Commission should have determined the *quantum meruit* of the relationship. It is pos-

sible that there was no service or relationship of value. Even such a finding would not necessarily result in a dismissal of the complaint. If there is a windfall in the case at bar by reason of Hoboken's right under its contract to use the Seatrain devices to fulfill its obligations of carriage, the Commission should determine that fact and also an equitable basis for division of the windfall between Hoboken and the trunk line carriers. This the Commission has failed to do by appropriate findings.

Whereas the burden of proof in attacking an established rate rests upon the complainant, *Interstate Commerce Commission v. Nashville C. & St. L. Ry. Co.*, 120 Fed. 934, the instant case was brought to determine a new division, since previous agreements did not cover the novel facts of the Seatrain method of interchange.

The agreement which Hoboken had had with the trunk line carriers since 1920 provides that the divisions shall be as follows:

	Per ton
Carloads loaded or unloaded by HMRR (Hoboken) or at its expense	$1.35
Carloads loaded or unloaded by shipper or consignee at their expense	.60

These rates are by their own terms inapplicable to the Seatrain method of interchange in which the loading and unloading is eliminated.

The act directs the Commission to inquire into the facts and to prescribe just and equitable divisions and not unjustly to prefer or prejudice any

party. There was no evidence presented to show that the granting of the entire saving of the loading or unloading of the cars was not an undue emolument for the trunk line railroads. The Commission's remark that the defendant's rates were based on average costs scarcely constitutes a finding as prescribed by the Act.[5] The Commission merely stated in conclusion that such divisions are not unduly preferential. While there is a lack of basic findings, the court need not examine the evidence and spell out conclusions of fact, *Florida* v. *United States*, 282 U. S. 194, 215. Likewise, where the evidence does not support the findings, the holding of the Commission should not be sustained. *Colorado* v. *United States*, 271 U. S. 153; *New England Divisions Case*, 261 U. S. 184, 204. Our holding on this point obviates the necessity for inquiring into the due process issue raised by the plaintiff.

If the Commission should find that the Seatrain devices are an efficient aid to railroad transportation, the Commission should evaluate the worth of the devices to Hoboken and a legitimate payment therefor; in short, including in the base upon which Hoboken's fair return is calculated, the true value of the Seatrain devices. In effect, the Commission, as a representative of the public interest

[5] Pursuant to *Ex Parte 123*, these divisions have been increased slightly. However, these figures were used by the parties, and, for convenience, we have followed their practice.

and the public would set the value of the contract and the Seatrain devices to Hoboken. It should likewise determine a division of the through rate which would not be unduly prejudicial or preferential to any of the parties.

The Order of the Commission of July 24, 1939, will be set aside and the Commission is directed to reinstate the proceedings before it and to make findings of fact as indicated by this opinion and to issue and enter a report in the proceedings and to make such an order or orders therein as may be required by law.

Findings of fact and conclusions of law are filed herein in accordance with the provisions of Rule 52.

JOHN BIGGS, JR.,
U. S. Circuit Judge.

GUY L. FAKE,
U. S. District Judge.

WILLIAM F. SMITH,
U. S. District Judge.

NOVEMBER 24TH, 1942.

In the District Court of the United States for the District of New Jersey

Civil Action No. 1100

HOBOKEN MANUFACTURERS' RAILROAD COMPANY, PLAINTIFF

v.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, ET AL., DEFENDANTS

FINDINGS OF FACT

1. On December 31st, 1936, there was filed with the Interstate Commerce Commission a complaint, Docket No. 27630, *Hoboken Manufacturers' Railroad Company* v. *The Akron, Canton & Youngstown Railway Company et al.*, in which complainant, Hoboken Manufacturers' Railroad Company, alleged that the divisions it was receiving out of joint class and commodity rates on traffic interchanged by it with Seatrain Lines were unjust and unreasonable, in violation of the Interstate Commerce Act, and wherein it sought an increase in such divisions. The complaint prayed that the Commission, after full hearing, enter an

order requiring the Eastern Trunk Line defendants to cease and desist from violating the said Act. Numerous rail carriers in Central Freight Association, Trunk Line, and New England Territories, as well as various southern and southwestern railroads, were named as defendants in the Commission proceedings.

2. Extensive hearings were conducted by an examiner of the Commission, at which all interested parties appeared and introduced pertinent testimony. An examiner's proposed report issued, to which exceptions were filed by Hoboken, and a reply was filed by the rail defendants. The proceeding was also fully briefed and orally argued before the Interstate Commerce Commission.

3. Thereafter a report of the Commission, dated July 24, 1939, and reported in 234 I. C. C. 114, was served upon all interested parties, which report is referred to and made a part of the petition in this case as Exhibit B.

4. The plaintiff, Hoboken Manufacturers' Railroad Company (hereinafter referred to as Hoboken), a corporation organized and existing under the laws of the State of New Jersey, is a short switching line railroad operating along the water front of Hoboken, New Jersey, serving numerous steamship piers, including the piers of ordinary cargo or so-called break-bulk steamships and also the pier of Seatrain Lines, Inc. (hereinafter referred as to Seatrain). At its northern

end it has track connections with the Erie Railroad, by means of which it interchanges cars containing freight with the Erie Railroad and through it with other trunk-line railroads, including intervening trunk lines.

5. The intervening defendants (hereinafter referred to as the trunk lines) are railroad corporations existing under the laws of the various states and operating trunk lines of railroad between the New York water front and points in the Eastern part of the United States, and either individually or with other railroads with which they connect they perform railroad transportation of freight between New York Harbor, including Hoboken, and points of origin and destination in the Eastern Part of the United States. They publish and keep on file with the Interstate Commerce Commission tariffs naming rates for such railroad transportation to and from New York Harbor, including the Hoboken water front and steamship piers reached by the switching line of plaintiff.

6. The railroad freight rates to and from New York Harbor, including the Hoboken water front, are of two sorts:

(a) So-called local rates, under which as to carload freight the railroads' terminal obligation and undertaking to the shippers is merely to place cars at convenient points for loading or unloading, the operation of loading and unloading being performed by the shippers or at their expense.

(b) So-called shipside or lighterage-free rates, under which it is the obligation and undertaking of the railroads to the shippers to receive freight discharged from a ship on the pier or a lighter alongside the ship, furnish a car for the rail movement, move the freight to the car, and load the freight into the car, providing dunnage or bracing therefor when necessary; and in the case of freight moving in the reverse direction to switch or lighter the freight to the steamship pier, doing everything necessary to deliver the freight to the vessel in such a way as to obligate the vessel to receive and transport it; this, by custom in the case of the ordinary type of break-bulk ship, including unloading the freight from the car and handling the freight to shipside where it can be conveniently reached by whatever tackle is used to load the ship.

This suit involves only these so-called shipside or lighterage-free rates and the division of these rates between plaintiff and the trunk lines.

7. As a switching railroad Hoboken performs for the trunk lines the terminal services and obligations devolving upon them under these rates in connection with freight received from or to be delivered to steamships docking at piers served by Hoboken. The trunk-line railroads collect the freight charges on such freight in accordance with their tariffs and Hoboken receives its compensation for its terminal services in the shape of

so-called divisions or allowances paid to it by the trunk-line railroads out of the freight charges collected by the latter.

8. Since 1920 there has been an agreement between Hoboken and the trunk lines providing that Hoboken's divisions should be as follows:

	Per ton
Carloads loaded or unloaded by H. & M. R. R. (Hoboken) or at its expense	$1.35
Carloads loaded or unloaded by shipper or consignee or at their expense	.60

(These divisions have been slightly changed in connection with percentage increases in the rates themselves, but for convenience the parties used the foregoing and they are used herein.)

The division of 60¢ a ton represents Hoboken's division of so-called local rates described in (a) of paragraph 6 and the division of $1.35 represents its division of shipside or lighterage-free rates described in (b) of paragraph 6, where in interchanging with ships it loads the freight into or unloads it from cars at its expense.

The division of 60¢ reimburses Hoboken for the expense of switching or wheeling the cars. The division of $1.35 is made up of this 60¢, plus 75¢, the approximate or average cost to Hoboken of loading or unloading freight into or from cars and the handling incident thereto.

Ordinarily, Hoboken performs the unloading from and loading into cars and handling across steamship piers, not with labor hired directly by it but by making a contract with the steamship

company concerned to do the work with steamship stevedore labor, Hoboken paying the steamship company approximately 75¢ a ton.

9. The proceeding before the Commission related to the division to be received out of shipside or lighterage-free rates in connection with freight interchanged with the vessels of Seatrain Lines, Inc., and arose because the rates include compensation to the trunk lines for loading freight into or unloading freight from cars in interchanging with vessels, but the necessity for such loading or unloading is eliminated by Seatrain's type of ship and its patented crane and devices and because the terms of the agreement above quoted are not applicable to freight interchanged with Seatrain since cars are neither loaded or unloaded by Hoboken or at its expense nor are they loaded or unloaded by the shipper or consignee at their expense.

10. Seatrain Lines, Inc., is a water carrier operating a new type of ocean-going steamship vessel designed to save the labor and expense of loading, unloading, handling, and furnishing cars ordinarily devolving upon the railroads at the ports in connection with freight transported by them under their so-called shipside or lighterage-free rates in interchanging such freight with steamships, this saving to be accomplished by a special type ship and the use of patented inventions, by which the freight is transferred between

rail and vessel in the cars used for rail movement without breaking bulk or handling the freight itself. The transfer is accomplished by means of a large crane, located on the pier alongside which the vessel docks, a car being transferred by the crane between the hold of the vessel and the pier upon a so-called cradle, which fits into a well upon the pier so that the car can be pulled off or shoved on to the cradle by a small locomotive, the cradle also fitting into the hatch of the ship.

11. In 1932, Hoboken asked its trunk-line connections to pay it a division or allowance on Seatrain freight of $1.00 a ton, made up of 60¢ to reimburse it for its switching cost and 40¢ to reimburse it for its payment to Seatrain. The trunk-line railroads refused and paid it only 60¢ a ton on all Seatrain freight. When the contract was changed in 1937, Hoboken asked a division of $1.35 per ton only on freight moving on lighterage-free or shipside rates (60¢ plus 75¢), but the trunk-line railroads again refused and persisted in paying it only 60¢ per ton on all freight received from or delivered to Seatrain's vessels, although out of the same rates they paid Hoboken $1.35 on freight interchanged with the Holland-America Line, Pan-Atlantic Steamship Co., and other steamship lines.

12. Thereupon plaintiff filed its complaint with the Interstate Commerce Commission asking the Commission, under Section 15 of the Interstate

Commerce Act, to prescribe the just, reasonable, and equitable divisions to be received by it and by the trunk lines, respectively, out of the ship-side or lighterage-free rates to and from the Hoboken water front on freight interchanged with Seatrain. The trunk-line railroads were made defendants in the proceeding.

13. Hearings were held before an Examiner of the Interstate Commerce Commission on this complaint. The Commission's Examiner submitted a proposed report, to which exceptions were filed, after which there was oral argument before the Commission.

14. Under date of July 24, 1939, the Commission rendered its decision, in which it found that the division of 60c (as subsequently changed by percentage increases) paid by the trunk lines to Hoboken on Seatrain traffic was not unjust, unreasonably low, inequitable, or unduly prejudicial to Hoboken. Based thereon, the Commission entered its order of the same date dismissing the complaint.

15. Thereafter Hoboken filed with the Commission a petition for reconsideration, which the Commission by its order of April 1, 1940, denied.

16. In its decision the Commission found that Hoboken as a switching line was entitled to receive divisions which would reimburse it for its full costs of handling the freight interchanged with Seatrain, including a fair return on the value

of the property, but it concluded that 60¢ (with the subsequent percentage increases) represented such full cost and that the contract payments made to Seatrain were not a part of Hoboken's costs of handling the traffic.

17. As a further ground for its decision, the Commission found that the payments might be justified as a part of Hoboken's expense if they were "necessary for the purpose of inducing the establishment of the new method of transfer," but the Commission concluded that there was "no evidence, however, that payments were or are necessary for this purpose" and based this conclusion upon a finding that

> The contract between Seatrain and complainant, to which defendant rail lines are not parties, is not evidence to this effect, in view of the control which Seatrain exercises over complainant.

and the Commission further found:

> There is ample reason to conclude * * * that this plan has sufficient advantages to impel its use and promotion by Seatrain regardless of any contributory payments from rail connections.

18. Because of the corporate relation between Seatrain and Hoboken, Hoboken asked the Commission to consider and determine whether the payment of 73¢ (formerly 40¢) provided by the contract represented reasonable compensation for the benefits derived by Hoboken to be included in

the costs for which Hoboken was entitled to reimbursement from the trunk lines and if 73¢ was not reasonable, then to determine what would be reasonable and fair compensation in the light of efficient management and operation of Hoboken's properties. The Commission failed to make any finding on this question, finding, for the reasons above indicated, that no payment whatever to Seatrain could properly be included in Hoboken's costs, for which it should be reimbursed by the divisions to be received from the trunk lines.

CONCLUSIONS OF LAW

1. The Commission's order dismissing Hoboken's complaint, although in form a negative order, has the effect of requiring Hoboken to continue to perform its terminal service as a switching carrier for the trunk lines in transferring freight between the trunk lines and Seatrain for 60¢ per ton (with the subsequent percentage increases) and is therefore, in effect, an affirmative order which is subject to review in this proceeding. *Alton R. Co.* v. *United States,* 287 U. S. 229. Moreover, under *Rochester Telephone Corp.* v. *United States,* 307 U. S. 125, this court has jurisdiction regardless of the form of the Commission's order.

2. This court may not substitute its judgment for that of the Commission as to what would be reasonable divisions to be received by Hoboken or as to what would be reasonable compensation to be

paid by Hoboken to Seatrain and to be included in Hoboken's costs, for which it should be reimbursed by the divisions paid to it by the trunk lines. But if the Commission in rendering its decision committed errors of law or disregarded or refused to receive evidence because of an erroneous belief that the evidence was not material or if the Commission failed to make a finding required of it, without which a proper determination could not have been made by it, this court may enjoin and set aside the Commission's order dismissing the complaint and may direct the Commission to reconsider its decision and take further proceedings in the light of the conclusions herein stated.

3. The Commission erred as a matter of law in not making a finding as to whether or not reasonable payment to Seatrain for the benefits derived by Hoboken and through Hoboken by the trunk lines from the interchange with Seatrain and the use by Seatrain of its patented devices in connection therewith, is part of Hoboken's costs of operation under efficient operation in the transfer of freight between the trunk lines and Seatrain, when on such freight the trunk lines charge their lighterage-free or shipside rates, and have the obligations and undertakings for which they are compensated by such rates.

4. The Commission erred as a matter of law and failed to carry out the duty imposed upon it

by the statute, to give due consideration "to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property" in that the Commission failed to consider and make a finding as to whether relationship between Hoboken and Seatrain was in the interest of the efficient operation of Hoboken as a rail carrier, and failed to consider and make a finding as to what payment by Hoboken to Seatrain would be reasonable compensation, consistent with such efficient operation, for the benefits derived by Hoboken and the trunk lines from the interchange arrangement with Seatrain, to be included in Hoboken's costs for which it is entitled to be reimbursed by the divisions paid to Hoboken by the trunk lines.

5. The Commission erred as a matter of law and failed to carry out the duty imposed by the statute of determining whether or not the divisions were unjust, unreasonable, inequitable or "unduly preferential' or prejudicial as between the carriers * * *" in that the Commission failed to direct its attention to the problem of the equitable division of the 75c saving occasioned by the interconnection with Seatrain.

6. The order of the Commission dismissing Hoboken's complaint should be set aside and annulled and the Commission should be directed (a) to reconsider the decision; (b) to determine

whether or not the relationship between Hoboken and Seatrain is of value; (c) if the Commission should find that the relationship is of value, to determine the amount of that value to be allowed in establishing Hoboken's legitimate costs; (d) to make a finding as to whether or not the allowance to the trunk line carriers of the entire saving of 75¢ per ton occasioned by the use of the Seatrain interconnection is "unduly preferential or prejudicial as between the carriers"; and (e) if the Commission should find that the allowance of the entire 75¢ to the trunk line carriers is unduly preferential or prejudicial, to determine an equitable division of the 75¢.

JOHN BIGGS, JR.,
U. S. Circuit Judge.

GUY L. FAKE,
U. S. District Judge.

WILLIAM F. SMITH,
U. S. District Judge.

NOVEMBER 24th, 1942.

U. S. GOVERNMENT PRINTING OFFICE: 1943

No. 43

In the Supreme Court of the United States

OCTOBER TERM, 1943

INTERSTATE COMMERCE COMMISSION, THE PENNSYLVANIA RAILROAD COMPANY, THE BALTIMORE & OHIO RAILROAD COMPANY, THE ERIE RAILROAD COMPANY, ET AL., APPELLANTS

v.

HOBOKEN MANUFACTURERS' RAILROAD COMPANY, APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY

BRIEF FOR APPELLANT, INTERSTATE COMMERCE COMMISSION

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OPINIONS BELOW

The opinion of the District Court (R. 109) is reported in 47 F. Supp. 779. The report of the Commission (R. 32) is published in 234 I. C. C. 114.

JURISDICTION

The final decree of the District Court was entered on January 8, 1943 (R. 127, 128). Petition

for appeal was filed March 8, 1943 (R. 128), and was allowed the same day (R. 132). Probable jurisdiction was noted on May 3, 1943 (R. 658). Jurisdiction is conferred by section 5 of the Commerce Court Act, c. 309, 36 Stat. 539, 543, 28 U. S. C., section 45a; section 238 of the Judical Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938, par. (4), 28 U. S. C., section 345, and the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219–221, 28 U. S. C., sections 45, 47a.

STATUTES INVOLVED

Pertinent provisions of the statute are set forth in the Appendix, *infra*, pp. 58–60.

QUESTIONS PRESENTED

1. In passing upon the reasonableness of rail divisions out of joint class and commodity rates applicable on traffic interchanged by the Hoboken Manufacturers' Railroad Company, a switching line, with Seatrain Lines, Inc., a common carrier by water, where the Commission found that the Hoboken's payments to Seatrain covered no rail transportation services and could not be included in the costs thereof, and the court agreed that the Commission's determination of this question was final, may the Court nevertheless require the Commission to include in the Hoboken's divisions of the rail rates something in respect of such payments?

2. Whether, in view of the Commission's de-

termination that the railroad's duty to deliver freight and rail transportation ended at the cradle on the dock adjacent to the vessels of the Seatrain, which finding the lower court accepted (R. 118) the District Court's subsequent action in remanding the case to the Commission to include "in the base upon which Hoboken's fair return is calculated, the true value of the Seatrain devices" (R. 118) was erroneous and a usurpation by the Court of authority which it did not possess?

3. Whether the Commission made the necessary findings.

4. Whether the findings made by the Commission were supported by the evidence.

STATEMENT OF THE CASE

Review is sought of an order of the Interstate Commerce Commission dated July 24, 1939 (R. 60, 70), finding, after full hearing, that the divisions received by the Hoboken Manufacturers' Railroad Company out of joint class and commodity rates on traffic interchanged by the Hoboken with Seatrain Lines were not unjust, unreasonable, inequitable, or unduly prejudicial (R. 49).

The Hoboken is a single track, terminal-switching line extending along the water-front of Hoboken, N. J., a distance of 1.632 miles (R. 33). It connects with the Erie Railroad and through the Erie with other trunk lines reaching the New York Har-

bor area (R. 33). It interchanges traffic also with the Delaware, Lackawanna & Western Railroad through a float bridge (R. 33). Numerous piers are served by the Hoboken, at which various steamship lines regularly dock, including the vessels of Seatrain Lines, Inc. (R. 33). The Seatrain, the operations of which are described in *Investigation of Seatrain Lines, Inc.*, 195 I. C. C. 215, 206 I. C. C. 328, is a common carrier by water subject to the Commission's jurisdiction (R. 33). Since 1932 it has operated vessels, on which it transports freight in railroad cars, between Hoboken, N. J., Havana, Cuba, and Belle Chasse, La., a point on the west bank of the Mississippi River about 10 miles south of New Orleans (R. 33). The Seatrain plan of operation is unique. It is described in the decision of the lower court as follows (R. 110):

> Seatrain Lines, Inc. (hereinafter referred to as "Seatrain") operates three ships. These are fast four-decked vessels, carrying standard gauge railroad tracks. Two of the vessels can carry one hundred freight cars each and the third ninety-five cars. The vessels operate between Hoboken, New Jersey and Belle Chasse in Louisiana, via Havana, Cuba. When a Seatrain ship is put in position at its dock, it is next to a "cradle" which, by means of a large overhead crane, lifts the loaded freight car from the dock and carries it through one of a number of large hatches on the ship

to one of the tracks within the vessel. The tracks of the cradle fit the tracks on ship, and the car is then pushed off the cradle to its place on the ship by a special little engine. There is one cradle for each track on each deck of the vessel and, when the loading of each deck is accomplished, the cradles are left in place flush with the deck, each cradle closing a hatch. In taking the car from ship to shore the process is reversed. By the use of the Seatrain method, goods and merchandise may be transported from shore to ship and from ship to shore without breaking bulk, and the necessity of loading and unloading the freight is eliminated.

The expense of loading and unloading freight to and from cars, ordinarily necessary in through transportation with break-bulk water carriers, is not incurred in the Seatrain operation (R. 47).

In 1932 Seatrain acquired control of Hoboken, all shares of the Hoboken's capital stock except five directors' qualifying shares being owned by the Seatrain, with common officers (R. 33–34).

In 1936, the Hoboken filed a complaint with the Commission (No. 27630) alleging that the divisions it was receiving out of joint class and commodity rates on traffic interchanged by the Hoboken with Seatrain were too low and seeking an increase (R. 22). Section 1 (4) makes it the duty of every common carrier subject to its provisions, in the case of joint rates, fares or charges "to

establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such participating carriers." The Hoboken also sought "adjustment" on all freight transported subsequent to the date of the filing of the complaint and moving under rates prescribed by the Commission (R. 26).

On carload traffic loaded or unloaded by the Hoboken or at its expense, its division of the joint through rate is $1.35 per ton; on carload traffic loaded or unloaded by the shipper or consignee or at their expense, the Hoboken division is 60 cents per ton (R. 37). In other words, where it is unnecessary to load and unload freight to and from railroad cars, as in making interchange with Seatrain, the rail defendants do not have to incur an expense of 75 cents per ton for such loading or unloading, which expense is incurred when freight moving under lighterage-free rates[1] is interchanged with other water carriers (R. 38–39).

Under the lighterage-free rates the service which the railroads hold themselves out to perform includes the unloading of in-bound cars and the placing of the lading within reach of ship's tackle and a corresponding but reverse service on out-bound freight (R. 47). Under the non-lighterage-free rates the shipper performs the unload-

[1] Some of the freight from and to Seatrain and some of that from and to other steamship lines moves under lighterage-free rates and some under non-lighterage-free rates.

ing and loading of cars and, therefore, the Hoboken has only switching service to perform for which it is accorded 60 cents under the tariffs (R. 111). Upon Seatrain freight the trunk lines have accorded the Hoboken the 60-cent switching division out of the lighterage-free rates (the same as out of the non-lighterage-free rates) because there is no necessity for loading or unloading Seatrain freight as in the case of break-bulk traffic with the ordinary steamship company in order to effect shipside receipt or delivery (R. 37–38).

The Hoboken's complaint to the Commission was only as to the divisions as between it and its immediate rail connections (R. 33), and, in the words of the Commission (R. 38), it sought a:

> division of 60 cents per ton out of non-lighterage-free rates and, $1.35 per ton out of lighterage-free rates. In other words, it is satisfied with its division out of non-lighterage-free rates if it receives $1.35 as its division of the lighterage-free rates. Whether it is entitled to a greater division out of the lighterage-free rates depends in large part on whether certain payments which complainant makes to Seatrain may be properly included in its costs for performing its part of the rail transportation to and from Hoboken.

The Hoboken's justification for a division of $1.35 on Seatrain lighterage-free traffic is, in substance, that if it is not thus enabled to pay Sea-

train, in accordance with its agreement, the trunk lines will obtain some benefit from Seatrain's use of the shiploading devices to the extent that they would be relieved of the expense of 75 cents per ton which they incur when cars are actually loaded or unloaded, in order to effect shipside receipt or delivery. (R. 38–39).

The Commission investigated the issues, hearings were conducted, briefs were filed, a proposed report was prepared and served, to which the Hoboken filed extensive exceptions, oral argument was had before the entire Commission, following which the report and order under review was issued. There is no contention that a full hearing was not accorded, and the lower court so found. (R. 115). *New England Divisions Case*, 261 U. S. 184, 200.

The report reviews the fact of acquisition of control of Hoboken by Seatrain in 1932 (R. 33–34), and the rearrangements necessary in connection with the Seatrain operation (R. 34). The cost of installing a crane was about $85,000, and the crane, together with the pier on which it is erected and a slip alongside the pier at which Seatrain vessels are berthed, is leased to Seatrain from the Hoboken (R. 34). The ascertainment of the rental therefor is described in the Commission's report (R. 34), and for the year beginning March 1, 1937, it amounted to more than $19,000 for the pier and slip and over $13,000 for the crane (R. 34).

In overruling Hoboken's allegation that the

"saving" of 75 cents per ton is possible because of Seatrain's investment and use of patented devices, obviating the necessity of loading and unloading freight, and therefore such saving should accrue to Seatrain and not to the rail defendants, the Commission said:

> The service which the railroads hold themselves out to perform under the lighterage-free rates includes the unloading of in-bound cars and the placing of the lading within reach of the ship's tackle and a corresponding but reverse service in connection with out-bound freight. For purposes of its own, Seatrain prefers to receive and deliver the loaded car. The unloading or loading of the car lading and its delivery or receipt at ship's tackle is therefore unnecessary. *The rail lines do all that is required when they place the cars in or take them from the Seatrain cradle.* From this point of view the payments which complainant makes to Seatrain cover no part of its transportation service under the lighterage-free rates and are in addition to the full costs of that service (R. 47). [Italics ours.]

The District Court accepted this finding as correct (R. 116), and said:

> Placing the cars upon the cradle or removing them therefrom satisfied all those requirements (R. 114).

On the next page (R. 48) the Commission also said:

> * * * The new method of transfer puts the connecting rail lines to less expense under the lighterage-free rates than the old method. It may be argued, therefore, that they would be justified in making any payments that might be necessary for the purpose of inducing the establishment of the new method of transfer, provided they were left with a net saving. There is here no evidence, however, that payments were or are necessary for this purpose. The contract between Seatrain and complainant, to which defendant rail lines are not parties, is not evidence to this effect, in view of the control which Seatrain exercises over complainant. No such payments have, so far as the record shows, been exacted or obtained by Seatrain from an independent rail connection. There is ample reason to conclude, also, that the improved method of transfer is only an incident to the Seatrain plan of transportation, and that this plan has sufficient advantages to impel its use and promotion by Seatrain regardless of any contributory payments from rail connections.
>
> It is true, as complainant points out, that if the payments which it now makes to Seatrain are not borne by defendant rail lines through a decrease in their divisions and a corresponding increase of complainant's divisions, they will receive

an unearned benefit. This comes about from the fact that this new method makes it unnecessary for the rail lines to perform all the service which they hold themselves out to perform under the lighterage-free rates. Those rates, however, are based on average conditions, and a similar unearned benefit would accrue if a steamship company now docking on the Manhattan water front and served by lighter should shift to a dock with direct rail connections on the Jersey shore. It would hardly be suggested that in such an event the defendant rail lines should compensate the steamship company for the change (R. 48).

PROCEEDINGS IN THE DISTRICT COURT

On August 27, 1940, the Hoboken filed its bill of complaint seeking an injunction against the Commission's order of July 24, 1939, which dismissed its complaint (R. 60). The United States was named as defendant (R. 1). The Interstate Commerce Commission (R. 57) and the Trunk Line railroads[2] intervened. The principal basis of the suit was an attack upon the finding of the Commission that the payments made by Hoboken to Seatrain under the contracts between them was no part of the Hoboken's legitimate transportation costs to be included in fixing its

[2] The Baltimore & Ohio Railroad Company, the Pennsylvania Railroad Company, the Erie Railroad Company, the Delaware, Lackawanna and Western Railroad Company, the New York Central Railroad Company, et al (R. 66).

divisions of the joint rates (R. 17–19). Other allegations were: that the Commission, in dismissing the complaint, failed in its duty under the Statute to "prescribe just, reasonable, and equitable divisions" to be received by the several carriers (R. 16–17); that necessary findings were not made (R 20) and that the findings were not supported by evidence (R. 18–19).

The case was argued twice in the District Court,[3] and on November 24, 1942, that court filed its opinion (R. 109) upholding the report in certain particulars (R. 115–116) but remanding the proceeding to the Commission to make findings which the court deemed necessary (R. 117–119). In its opinion the District Court said (R. 114):

> "The Commission concludes that the record before it warrants the finding that the former division of 60¢ and the present divisions of 63¢ and 66¢ a ton on lighterage-free freight are sufficient to cover the cost of the services performed by Hoboken and also constitutes a reasonable return on the property owned or used by Hoboken in performing such service. The Commission goes on to say, and we think correctly, that the service that the railroads hold themselves out to perform under the lighterage-

[3] The first argument, before Circuit Judge Clark and District Judges Fake and Walker, occurred on June 19, 1941 (R. 1). Before any decision was forthcoming, Judge Clark entered the Army and Judge Walker resigned, necessitating reargument, which was had on April 18, 1942, before Circuit Judge Biggs and District Judges Fake and Smith (R. 1).

> free rates includes the unloading of inbound cars and the placing of the lading within reach of the ship's tackle and a corresponding but reverse service in connection with out-bound freight. Placing the cars upon the cradle or removing them therefrom satisfied all those requirements.

After stating "there is here no contention that the proceedings before the Commission were not fair and adequate in every way" (R. 115), the lower court held that "the finding by the Commission that rail transportation ends at the cradle when Hoboken has put the car consigned for Seatrain upon it and begins at the cradle when the movement is reversed is fully supported by the evidence" (R. 116). The court also said:

> * * * Since, as the Commission determined, transportation ends at the cradle, Hoboken completes its obligation under the lighterage-free tariff when it delivers the cars to the cradle. The Commission, therefore, held that the payments by Hoboken to Seatrain do not constitute a legitimate transportation cost. Upon this finding, supported by evidence, its judgment is final * * * (R. 116).

The Commission, so far as the issues presented were concerned, might well have concluded its report with the findings that "Hoboken completes its obligation under the lighterage-free tariff when it delivers the cars to the cradle" (R. 116) and that "the payments by Hoboken to Seatrain do not con-

stitute a legitimate transportation cost" (R. 116) and cover no part of Hoboken's transfer service under the lighterage-free rates.

But the report did not stop with this finding, purely administrative in nature. The Commission pursued the subject further, and discussed the question "whether such payments may be justified, in any way and to any extent, as compensation properly payable to Seatrain for the savings which it has accomplished for the rail lines by its new method of transfer" (R. 48). We believe such a discussion was strictly unnecessary to a decision, because what the Commission had already said was sufficient to dispose of the case. The lower court referred to the contract between Hoboken and Seatrain and said

> The Commission did not determine the validity of the contract, but dismissed the entire question of the contract payments on the theory that Hoboken would receive the same interconnecting facilities irrespective of the payments (R. 117).

It added (R. 117):

> * * * The Commission should have determined the *quantum meruit* of the relationship. It is possible that there was no service or relationship of value. Even such a finding would not necessarily result in a dismissal of the complaint. If there is a windfall in the case at bar by reason of Hoboken's right under its contract to use the Seatrain devices to fulfill its obligations of

> carriage, the Commission should determine that fact and also an equitable basis for division of the windfall between Hoboken and the trunk-line carriers. This the Commission has failed to do by appropriate findings.

The court remanded the case to the Commission with directions (R. 126).

> (a) to reconsider the decision; (b) to determine whether or not the relationship between Hoboken and Seatrain is of value; (c) if the Commission should find that the relationship is of value, to determine the amount of that value to be allowed in establishing Hoboken's legitimate costs; (d) to make a finding as to whether or not the allowance to the trunk-line carriers of the entire saving of 75¢ per ton occasioned by the use of the Seatrain interconnection is "unduly preferential or prejudicial as between the carriers"; and (e) if the Commission should find that the allowance of the entire 75¢ to the trunk-line carriers is unduly preferential or prejudicial, to determine an equitable division of the 75¢.

It seems to be the court's view that some, at least, of the "saving" accruing to the trunk lines as a result of Seatrain's use of its devices should be included in the Hoboken's costs; the Commission takes a contrary view. The Commission's report contained a full discussion and adequate findings as to the absence of any "worth" to the

Hoboken of Seatrain's use of its ship-loading devices and methods of operation, and found that the rail transportation services ended at the cradle, and hence that anything beyond that point was no part of a railroad's legitimate costs (R. 47). We think the court has attempted to substitute its judgment for that of the Commission upon an administrative matter, and overlooked the rule stated in the case of *Int. Com. Comm.* v. *Union Pacific R. R.*, 222 U. S. 541, 547, that a court "will not consider the expediency or wisdom of the order, or whether, on like testimony, it would have made a similar ruling."

SUMMARY OF ARGUMENT

I. The Commission's findings that the service which the railroads hold themselves out to perform under the lighterage-free rates includes the unloading of in-bound cars and the placing of the lading within reach of ship's tackle and a corresponding but reverse service on out-bound traffic, and that the rail lines do all that is required under the rates sought to be divided in this case when they place the cars in or take them from the Seatrain cradle, (R. 47) findings accepted by the District Court, (R. 116) are administrative findings, and being supported by substantial evidence, are conclusive. (*U. S.* v. *American Tin Plate Co.*, 301 U. S. 402, 408). Consequently the Commission was clearly correct in holding that it would not include in the Hoboken's operating expenses,

for the purpose of dividing the rail rates, payments which the Hoboken makes under a contract with Seatrain Lines, Inc., the controlling company. The payments to Seatrain, as found by the Commission, did not relate to any necessary part of the Hoboken's rail transportation service under the rates to be divided. Seatrain's ship-loading device "is only an incident to the Seatrain's plan of transportation," and "has sufficient advantages to impel its use and promotion by Seatrain regardless of any contributory payments from rail connections" (R. 48). The Commission also found that the present divisions "are sufficient to cover the cost of the service performed by complainant [Hoboken] and also a reasonable return on the property owned or used by it in performing such service" (R. 41). In fact, counsel for appellee conceded before the Commission if it was not proper to consider the payments which Hoboken makes to Seatrain as a part of Hoboken's costs, the divisions are adequate and "we are not entitled to anything more" (R. 619).

The Commission also considered the question whether such payments may be justified, *in any way and to any extent,* as compensation properly payable to Seatrain for the savings which it has accomplished for the rail lines by its new method of transfer (R. 48). The District Court held the Commission should have determined the *quantum meruit* of the relationship (R. 117) and if there is

a "windfall" (R. 117) the Commission should determine that fact and also an equitable basis for the division of the "windfall" between the Hoboken and the trunk lines (R. 117) and remanded the case to the Commission to make findings thereon (R. 126). But the payments are not for any benefit to the rail lines under the rail rates, but are for water transportation services beyond and in excess of anything covered by the rail rates applicable to and from Seatrain's car cradle. The services accomplished by the Seatrain devices are a part of its transportation to be compensated for out of its water rates and revenues. In fact, in another complaint (R. 643) Seatrain, a common carrier by water, is seeking from the rail lines a larger share of the rail-water rates and relies in part upon the alleged labor-saving value of its special cradle and car elevator devices and patents. Docket 28668, *Seatrain Lines* v. *A. C. & Y. R. R. Co. et al* (R. 643). Accordingly if the Commission was right in finding transportation under the rail rates ends at the cradle, any payment, to any extent, on the theory that Seatrain is benefiting the rail lines in a way entitling it to compensation, means that Seatrain is seeking to be paid twice for its patented device. Seatrain has devoted its patented device to the public use as an essential aid to its scheme of water transportation, and if not satisfied with the yield from the water rates, may not look to the preceding rail rates to add to its compensation. In the last analysis it is

the shipper who bears both rates covering the through transportation and he cannot be asked to pay Seatrain twice for the transfer service.

This decided interest of the shippers in the savings resulting from the patented device raises the question of whether in any event the railroads are free to contract to make payments to Seatrain of said savings, or any part thereof.

The Commission did discuss the question of a "windfall," which the lower court apparently overlooked in remanding the case to the Commission for additional findings, although the Commission used the term "unearned benefit" (R. 48). It held against the contention that there was an "unearned benefit" (R. 48), pointing out, among other things, that the rates were based on average conditions.

If Seatrain were to receive from Hoboken the cost of its patents and the trunk lines were to reimburse Hoboken, it would place the entire burden of the transfer costs on the trunk lines. Seatrain pays $50,000 a year in royalties on its combination patents which expire in 1944 (R. 39). If the trunk lines were to assume Seatrain's patent expense by increasing Hoboken's divisions, this would be to require the trunk lines to bear the expense of loading and unloading Seatrain's vessels because it would transfer the actual point of interchange between Hoboken and Seatrain from alongside the ship at the car cradle to a theoretical point of interchange in the hold of the ship.

As tending to show the reasonableness of the divisions received by Hoboken of 60 cents a ton prior to March 28, 1938, and 63 and 66 cents a ton subsequent thereto (R. 111), which represent an increase of 215 and 230 percent over the 20-cent per ton allowance in effect prior to July 1, 1918 (R. 113), it is shown that if the divisions had increased in the same manner as the rates increased, the Hoboken's present allowances would range from 38 to 42 cents, depending upon commodities and territorial application of the rates (R. 113).

II. The Commission did not fail to make any essential finding. Its report discusses the traffic handled by Hoboken and the cost thereof, and it reaches the conclusion that the existing divisions are not unjust or unreasonably low. The lower court's holding that the Commission should discuss the question of a "windfall" accruing to the trunk lines overlooks the fact that the Commission did in fact pass upon this question and made findings thereon.

III. The order of the Commission is supported by substantial evidence. While the length of the record is not necessarily controlling, it covers more than 450 pages of the printed record. It is significant also that the lower court in its opinion held that "there is here no contention that the proceedings before the Commission were not fair and adequate in every way" (R. 115). The court also affirmed the conclusion of the Commission "that the payments by Hoboken to Seatrain do

not constitute a legitimate transportation cost. Upon this finding, supported by evidence, its judgment is final" (R. 116). The lower court stated too that "the finding by the Commission that rail transportation ends at the cradle when the Hoboken has put the car consigned for Seatrain upon it and begins at the cradle when the movement is reversed, is fully supported by the evidence" (R. 116).

IV. No proper foundation has been laid for an allegation of confiscation. The complaint in this case did not properly present the issue of confiscation (*Beaumont, Sour Lake & Western Ry. Co.* v. *United States,* 282 U. S. 74, 88–89). It was conceded in this case in the argument before the Commission that with the payments by Hoboken to Seatrain excluded, then the divisions which Hoboken receives, "are adequate divisions and we are not entitled to anything more" (R. 619).

No charge of confiscation can be made in a divisions case where the joint rates sought to be divided are not attacked as unreasonable. (Concurring opinion in *Baltimore & Ohio R. Co.* v. *United States,* 298 U. S. 349, 381–392.)

V. The Court's attention is directed to the fact that Seatrain vessels have been taken over by the Government for other purposes, and are not now operating. Seatrain's service to and from Hoboken was discontinued on or about February 1, 1942, and the question of mootness will at once arise. We do not believe the case is moot. Follow-

ing the conclusion of the war, when the boats are returned to Seatrain, if the Commission's order is in effect, the parties can resume operations immediately and a known basis of divisions will exist. In the Hoboken's complaint to the Commission, it asks for "an adjustment" in the past divisions and reparation. Whether it is entitled to "adjustment" cannot be determined if the case is held moot.

ARGUMENT

I

The Commission was clearly correct in finding that the payments which Hoboken makes, under its contract with Seatrain, did not constitute costs to be considered by the Commission in dividing joint through rates

This case involves the divisions[4] of joint through rates between common cariers by railroad, the Hoboken, a terminal switching carrier, on the one hand and the Eastern Trunk Lines, on the other (R. 32–33). Although Seatrain Lines, Inc., a common carrier by water, is referred to frequently in the report of the Commission, no divisions between it and the rail carriers are involved.[5]

[4] Defined in *St. L. S. W. Ry. Co.* v. *United States*, 245 U. S. 136, 139 (footnote 2), as "the share of the 'joint rate' to be received by each."

[5] Divisions between Seatrain and the railroads are involved in Docket No. 28668, *Seatrain Lines, Inc.*, v. *The Ahnapee & Western Ry. Co. et al.*, filed May 22, 1941. The respective rights of Seatrain, on the one hand, and the railroads, on the other, are under consideration in Docket No. 28668, the complaint in which is in this record (R. 643).

The "storm center" of the suit is the finding by the Commission that the payments which the Hoboken makes under a contract with the Seatrain, the controlling company, should not be included as a necessary part of the cost of the rail transportation service performed by the Hoboken (R. 38). The Commission determined that the Seatrain's patented device, permitting transfer of freight cars from dock to vessel without the necessity of loading or unloading, "is only an incident to the Seatrain's plan of transportation, and that this plan has sufficient advantages to impel its use and promotion by Seatrain regardless of any contributory payments from rail connections" (R. 48). The Commission found that "the rail lines do all that is required when they place the cars in or take them from the Seatrain cradle" (R. 47). Further, that "the payments which complainant makes to Seatrain cover no part of its transportation service under the lighterage-free rates and are in addition to the full costs of that service" (R. 47).

It is well settled by many decisions of this Court that the question as to where transportation ends is an administrative question for determination by the Commission. *Atchison Ry. Co.* v. *United States*, 295 U. S. 193, 201, *United States* v. *American Sheet & Tin Plate Company*, 301 U. S. 402, 408, *United States* v. *Pan American Petroleum Corporation*, 304 U. S. 156, and *Swift &*

Company v. *United States*, 316 U. S. 216. The lower court did not question this well-settled principle and held that the placing of the cars upon the cradle or removing them therefrom satisfied the railroad's obligation under the lighterage-free rates (R. 115). It also held that "the finding by the Commission that rail transportation ends at the cradle when Hoboken has put the car consigned for Seatrain upon it and begins at the cradle when the movement is reversed," is fully supported by the evidence (R. 116). It also upheld as "final" (R. 116) the Commission's finding that "the payments by Hoboken to Seatrain do not constitute a legitimate transportation cost" (R. 116), because supported by evidence (R. 116).

The Commission, after making these findings, passed on to the question of whether such payments may be justified, *in any way and to any extent*, as compensation properly payable to Seatrain for the savings which it has accomplished for the rail lines by its new method of transfer" (R. 48).

Under an agreement dated November 21, 1932 (R. 38) between Hoboken and Seatrain, it was agreed that Seatrain would perform as agent for Hoboken the necessary physical handling of the cars between the car cradle and the hold yard and for such service Hoboken agreed to pay Seatrain 40 cents per net ton for each ton of freight, other than coal, loaded into or discharged from

Seatrain's vessels (R. 38, 52). In 1936, Hoboken paid Seatrain approximately $110,000 under this contract (R. 39). The contract was cancelled as of March 1, 1937, and under an agreement dated February 24, 1937 (R. 38, 53), Hoboken obligated itself to pay Seatrain 73 cents per ton for each ton of freight interchanged between them and moving on lighterage-free rates* (R. 38). Since March 1, 1937 all of the physical handling of the cars in rail service to and from the Seatrain cradle has been performed by and at the expense of Hoboken (R. 38) without any service rendered by Seatrain.

If, as stated in the report of the Commission and agreed to by the Court, the payments are not made for any service which the rail lines perform under the lighterage-free rates (R. 48), there would appear to be no remaining question in this proceeding involving only the Hoboken and the trunk lines, whether such payments may be justified in any way, *or to any extent* (R. 48), as compensation properly payable to Seatrain for the savings resulting from Seatrain's ship-loading devices and method of operation. The patented device and Seatrain's whole manner of transportation does away with the need for the maximum service covered by the rates, namely, the unloading of the contents of the car and placing it at a spot

*No such payment is made by Hoboken to Seatrain on non-lighterage-free freight (R. 38), although Hoboken's service is the same in both instances (R. 340).

within reach of ship's tackle (R. 48). The rail rates are applicable to the Seatrain's freight pursuant to the finding in the report that, under such rail rates, transportation ends at the cradle (R. 47), but they cannot be said to contemplate any part of the service of lifting the cars into the boat and spotting them on the tracks. The payments are not for a benefit to the rail lines under the rail rates, but are for a transfer service beyond and in excess of anything covered by those rates. The services performed by Seatrain's devices are part of its transportation to be compensated for out of its water rates and revenue. Since transportation under the rail rates ends at the cradle, any payment, *to any extent* (R. 48), on the supposition that Seatrain is benefiting the rail lines in a way entitling it to compensation, would mean that Seatrain was seeking compensation twice for its patented device.

In view of the above, it seems clear that compensation and services under the rail rates on the one hand, and Seatrain's separately established water rates, on the other, must be kept separate. It would seem that the transfer service of lifting the loaded cars on to the boat and spotting them on deck tracks, which is accomplished by Seatrain's patented device, is so much a part of its whole scheme of transportation that, without it, it would not be in existence, and, therefore, that it would normally, if not necessarily, be assigned as

practically an inseparable part of Seatrain's transportation as a whole (R. 48). Moreover, Seatrain without doubt would not accept the 75-cent payments on the understanding that its water rate is to be cut down to the basis of a rate for its transportation service minus the transfer service at Hoboken (or some indefinite part thereof) of lifting and spotting the loaded cars on the deck tracks. But unless that is the case Seatrain is, through its contract with the Hoboken, seeking double compensation, and the burden of such contract may not be equitably shifted to the trunk lines. In any event and as conceded by the lower court, the Commission's report is clearly right in its finding that transportation under the rail rates ends at the cradle (R. 116). It necessarily follows that the rates to which Seatrain must look are its separately established water rates for the transportation service beyond.[1] Seatrain has devoted its patented device to the public use as an essential aid to its scheme of water transportation and, if

[1] As a matter of fact, in a pending complaint which is included in this record (R. 643) filed on May 22, 1941, entitled *Seatrain Lines, Inc.*, v. *The Akron, Canton & Youngstown Railway Company et al.* (naming Hoboken Manufacturers' Railroad Company as a defendant therein), and docketed with the Commission as No. 28668, Seatrain alleges its divisions of rates applicable on traffic handled in connection with the rail lines via Hoboken, N. J., are unreasonably low, seeks increased divisions, and in support thereof relies in part upon the alleged labor-saving value of its special cradle and car elevator devices and patents (R. 648).

not satisfied with the yield from its water rates as subject to regulation and competitive conditions, it still may not look to the preceding rail rates to add to its compensation. In the last analysis it is the shipper who bears both rates covering the through transportation and he cannot be asked to pay Seatrain twice for the transfer service its device performs.

This raises the question whether in any event the railroads are left free to make payments to Seatrain of the said savings, or any part thereof, because of the fact that shippers have a decided interest in such savings.

The proposition may be thus stated: The railroads hold themselves out by their rates charged against shippers to perform the break-bulk transfer service of unloading the cars, etc., and, therefore, the rates paid by the shippers include a charge of 75 cents for a service which, in their application to Seatrain traffic, the railroads will in no case be called upon to expend. Since Seatrain's new device and method of transferring (and transporting) the loaded cars enables the railroads to make this saving, the report states that it might be argued that they would properly be justified in making such part of the 75-cent payments to Seatrain as might be necessary to induce the establishment of the new method of transfer, so long as they were left with a net sav-

ing.* R. 48). However, since the rail rates exacted from shippers are not under attack, and presumptively yield adequate compensation when the 75 cents for the unloading service is expended by the railroads, the fact that any need for the expenditure is eliminated in the case of Seatrain traffic might render them unreasonable and excessive as so exacted and, therefore, entitling shippers to a reduction and also to the right to claim reparation in the amount of the excess. But if the railroads were to bargain to make continuing payments to Seatrain of 75 cents on each ton of traffic, that would substantially wipe out any saving under the rates and show the expenditures as made and, if the payments were legitimate, it would follow that shippers would be precluded from rate reductions and reparation which might otherwise be their right.

The lower court apparently considered that the Commission should have passed upon the validity of Hoboken's contract with Seatrain (R. 118). The most that was necessary in this respect was to consider whether the Hoboken could, by its con-

* The report meets the proposition which it has posed by answering it in the negative way of stating that there is no evidence showing that payments were necessary for the purpose; that Hoboken's contract did not show that the payments were necessary since Hoboken was subject to the control of Seatrain (R. 48). The lower court was apparently misled by assuming that the Commission conceded the proposition as fundamentally sound, and it did not consider that it had been adequately and soundly met and answered (R. 117–118).

tract, extend the published rates to include service not already embraced therein; or whether all the railroads acting together could do so, except by tariff publication which would be subject to suspension and the Commission's consideration in an I. & S. proceeding.* The lower court speaks of a "windfall" accruing to the trunk lines through Hoboken's contract with Seatrain (R. 117), meaning by this apparently the 75-cent expenditures the railroads were relieved from paying. As above pointed out the railroads could not bargain this saving away to Seatrain without consideration of shippers and, if by its contract, Hoboken has attempted to do so, it cannot look to the other railroads, parties to the joint rates, to share its losses based on a claim for equitable division of said rates. The principal answer is that the Hoboken could not by its contract extend the published rates to embrace the payments. The payments are continuing payments with each ton of freight and would necessarily come out of and permanently burden the rates if they could conceivably be regarded as legitimate. While a saving does result, it is one in which shippers as well as railroads have a decided interest for reasons given, and the Hoboken has no greater claim to it than the other railroads by reason of the obligation to make payments it has assumed in its contract.

* Under Section 15 (7) of the Interstate Commerce Act.

The Commission gave due consideration to this question of "windfall" or "unearned benefit" as it described it, and for reasons stated in its report, overruled the Hoboken's contentions made thereon. The report reads (R. 48):

> It is true, as complainant points out, that if the payments which it now makes to Seatrain are not borne by defendant rail lines through a decrease in their divisions and a corresponding increase of complainant's divisions, they will receive an unearned benefit. This comes about from the fact that this new method makes it unnecessary for the rail lines to perform all the service which they hold themselves out to perform under the lighterage-free rates. Those rates, however, are based on average conditions, and a similar unearned benefit would accrue if a steamship company now docking on the Manhattan water front and served by lighter should shift to a dock with direct rail connections on the Jersey shore. It would hardly be suggested that in such an event the defendant rail lines should compensate the steamship company for the change.

The reasoning of the Commission in this case calls to mind language used by this Court in the divisions case of *Baltimore & Ohio R. Co. v. United States*, 298 U. S. 349, where this Court said (pp. 358–60):

> In substance, Congress by that paragraph [Section 15 (6)] authorizes the com-

mission to take into account all that is relevant to the ascertainment of fair divisions. While presumed valid, its order may be annulled if shown to rest on a misconstruction of the Act or upon inadequate or unsupported findings of fact. The commission alone is authorized to decide upon weight of evidence or significance of facts. There is no single test by which "just," "reasonable," or "equitable" divisions may be ascertained; no fact or group of facts may be used generally as a measure by which to determine what division will conform to these standards. Considerations that reasonably guide to decision in one case may rightly be deemed to have little or no bearing in other cases. Error as to the weight to be given financial needs, operating costs or other material facts is not a misconstruction of the Act.

The report shows that the commission received much evidence bearing upon the standards set by § 15 (6), to govern it in making the divisions. Appellants' claim that the order rests exclusively upon the southern lines' financial needs is negatived by the record. Many other facts were shown to have been presented and considered. There is no requirement that the commission specify the weight given to any item of evidence or fact or disclose mental operations by which its decisions are reached. Useful precision in respect of either would be impossible. And it would be futile upon the record to attempt definitely

to ascertain the weight assigned to any fact or argument in prescribing the divisions. We find no support for appellants' claim.

This Court also said that "in prescribing divisions found by it to be just, reasonable, and equitable," the Commission's findings of fact, supported by evidence, are conclusive (p. 364). It must be remembered that Hoboken's complaint brought in issue only the divisions of rates and revenues between the Hoboken and its trunk line connections for rail services performed on lighterage-free freight beyond the point of receipt and delivery of the freight at foot of ship's tackle or alongside vessel. The Commission was not called upon to consider the divisions of Seatrain.

On carload freight transported by the trunk-line railroads, the Hoboken, and Seatrain as connecting carriers, Hoboken acts as an intermediate or bridge line, but the freight is handled in railroad cars in continuous service. Although the transportation does not end at the Seatrain car cradle, the controlling fact is that the Commission was only required to determine at what point, under the rates to be divided, rail transportation commenced or ended. Under section 15 (6), of course, the relative amounts and costs of service expended by the parties are of special importance. *Baltimore & O. R. Co.* v. *United States,* 298 U. S. 349, 360. The only service or costs which can be considered in this connection are those expend-

ed in performing the service covered by the rates to be divided, and in this connection, it was necessary for the Commission to determine what were covered by the rates to be divided. On the evidence presented, the Commission made such determination (R. 47).

Having made the determination that the rail service under the rates to be divided ended at the Seatrain cradle, the Commission could not of course award to the Hoboken increased divisions for any expense voluntarily assumed by it covering a service or facilities east of the cradle.

Hoboken's argument is based upon the erroneous premise that there is a fixed obligation on the eastern railroads to load or unload *all* carload freight moving under lighterage-free rates to and from New York harbor and that Seatrain's patented devices and method of operation with cradle and crane relieve the railroads of the expense which they would otherwise incur in satisfying the obligation to load or unload the freight cars if the connecting water line were a break-bulk steamship, and that Seatrain should be reimbursed for its entire patent expense because of the financial benefits accruing to the railroads (R. 38, 47).

The fact is that the rail carriers' only obligation in effecting an interchange of lighterage-free freight with a water carrier at New York harbor, whether a break-bulk steamship or Seatrain, is to

deliver or receive the freight alongside the ship so that the water or rail transportation may be completed by the connecting line (R. 34). There is no tariff or other obligation on the trunk-line railroads, or on the Hoboken, to load or unload *all* lighterage-free freight. Their obligation is to place the freight or receive it from alongside the vessel. The railroads' transportation service and the costs incurred therefor, in delivering lighterage-free freight to or receiving it from the steamships at New York harbor, are not uniform and vary greatly under the different circumstances presented (R. 48). Freight sometimes is lightered by the railroads to and from certain break-bulk steamships at piers in Brooklyn, Manhattan, or the Jersey shore, and placed at or received from the foot of ship's tackle.

On lighterage-free freight interchanged with a break-bulk steamship the expense of loading or unloading the railroad cars is borne by the rail carriers if such service is necessary to placement or receipt of the freight alongside vessel (R. 47). Lighterage service is a frequent incident in accomplishing the interchange of such freight with break-bulk steamships not directly served by rail. At certain railroad terminals, particularly on the Jersey shore in New York harbor, open-top equipment may be placed on road tracks and facilities adjacent to the piers (R. 418). When

freight is delivered direct from a car to the steamship or from the steamship to the open-top car by means of a ship's tackle, the railroad company does not assume any costs for loading or unloading the cars or any stevedoring or lighterage costs of any kind (R. 418).

As previously stated, the only obligation of the rail carriers is to place or remove the freight from alongside the ship. As an incident to the performance of this obligation the rail carriers load or unload lighterage-free freight where necessary to make the interchange with the connecting break-bulk steamship. But this does not mean that there is a separate and independent tariff obligation or undertaking to load or unload the freight whether necessary or unnecessary to such delivery or receipt. In the interchange with Seatrain the only obligation or undertaking is completely satisfied and extinguished when the freight is placed at or removed from the car cradle. Of course, if the railroads were to load or unload each car of lighterage-free freight in order to carry out the alleged obligation asserted by the Hoboken, then Seatrain would be required to perform a corresponding service in loading and unloading railroad equipment which it transports, thus nullifying the benefits accruing to Seatrain as the result of its unique method of operation. Seatrain does not want to load or unload railroad freight cars for the reason that its patented devices and facilities permit it to handle freight units of an

average weight of 30 tons (R. 39, 40), the railroads furnishing the cars as containers. In this way, Seatrain saves the stevedoring expense which is incurred by break-bulk steamship lines, reduces the turn-around time in port, and holds out an attractive transportation service to shippers. A shipper has a statutory right (49 U. S. C. A. 15 (8)) to specify the routing of shipments and presumably shipments are routed via Seatrain because breaking bulk and freight handling at the port is avoided. Shippers or consignees who elect to use Seatrain transportation service are not relying upon a bill of lading or tariff obligation that the railroads are required in all instances to load or unload the freight to and from the railroad cars at New York harbor. There is no obligation to Seatrain on the part of the rail carriers to pay to it what loading or unloading would cost them if Seatrain did not prefer to take the freight in the cars. Neither the Hoboken nor Seatrain owns freight car equipment. The Trunk-Line railroads furnish the cars, the freight is actually in the cars in the course of a through transportation movement via Seatrain when tendered to or in the possession of the Hoboken, and need not be loaded or unloaded. Reference here may be made to the Commission's report and order dated December 23, 1940, effective May 1, 1941, prescribing joint through rates between eastern trunk line and New England territories and southwestern territory applicable over Sea-

train Lines and the rail lines serving the above-mentioned territories (*Seatrain Lines, Inc.* v. *Akron, C. & Y. Ry. Co.*, 243 I. C. C. 199), and to other Commission reports requiring the railroads participating in through routes to interchange loaded freight cars with Seatrain. *Seatrain Lines, Inc.* v. *Akron, C. & Y. Ry. Co.*, 226 I. C. C., 7, 29, and *Hoboken Mfrs. R. Co.* v. *Abilene & S. Ry. Co.*, 237 I. C. C. 97, 99.

That the Commission had in mind the fact that the joint rates, the divisions of which here are under attack although the rates themselves are not attacked, were based upon varying conditions as before depicted, is apparent from its language (R. 48) as follows:

> * * * Those rates, however (lighterage-free rates), are based on average conditions, and a similar unearned benefit would accrue if a steamship company now docking on the Manhattan water front and served by lighter should shift to a dock with direct rail connections on the Jersey shore. It would hardly be suggested that in such an event the defendant rail lines should compensate the steamship company for the change.

The record shows that there are many different methods of interchange depending upon the different physical situations presented at New York harbor in connection with the receipt and delivery of freight moving under "lighterage-free" rates, and that the point at which the railroads' trans-

portation obligation begins or ends is a question of fact to be determined by the Commission in each case. In those cases where payments are made by the Hoboken and by other railroads to certain break-bulk steamship lines, the steamship lines actually perform the work of loading or unloading the railroad cars containing lighterage-free freight in order to place the freight alongside the vessel within reach of ship's tackle so that the interchange between the railroad and the water line may be accomplished. The duty to place or receive the freight alongside the vessel is a tariff obligation. Seatrain, however, performs no work or service of any kind in effecting the interchange at its car cradle alongside the ship. The Seatrain cradle and crane are used for the purpose of loading and unloading the vessel. The expense of loading and unloading break-bulk vessels at New York harbor is borne by the steamship lines and not by the railroads.

The attempt to force the Trunk Line railroads to pay for Seatrain's patents and facilities through contributions to the subsidiary corporation ignores the fact that the patents and method of transfer have a value to Seatrain and permit it to function successfully as a new type of water carrier. On in-bound traffic to Hoboken, Seatrain for its own account and to complete its transportation obligation must use its specially designed terminal facilities. On traffic from Hoboken to Seatrain, the placement by the former of the car

at the cradle alongside the vessel completes its transportation duty to deliver the freight to its connecting carrier (R. 47).

If Seatrain were to receive from Hoboken the cost of its patents and the Trunk Lines were to reimburse Hoboken, it would place the *entire* burden of transfer on the Trunk Lines. The assumption of Seatrain's patent expense by Hoboken, and ultimately by the Trunk Lines by increasing Hoboken's divisions, would in effect be requiring the Trunk Lines to bear the expense of loading and unloading Seatrain's vessels because it would transfer the actual point of interchange between Hoboken and Seatrain from alongside the ship at the car cradle to a theoretical point of interchange in the hold of the ship. Rail carriers at New York harbor do not load or unload break-bulk steamships, and such expense is borne by the water lines. The railroads merely place the freight alongside the ship. That is all they are required to do in connection with Seatrain traffic.

Seatrain pays approximately $50,000.00 a year in royalties on its combination patents which expire in 1944 (R. 39). The Commission's report shows that in 1937, Hoboken interchanged with Seatrain 9,633 cars of freight out of a total of 15,799 carloads handled by it (R. 36). The record shows that for the last 10 months of 1937, 44.67 percent of the Seatrain trunk-line traffic

moved under lighterage-free rates. Applying this percentage to 9,633 cars produces 4,303. The average weight of the freight in cars, interchanged with Seatrain at Hoboken, is approximately 30 tons (R. 39) so that Hoboken is claiming for the benefit of Seatrain 4,303 times 30 tons times 73 cents, or $93,235.70 a year.

There is no obligation on Hoboken to pay for Seatrain's patent rights. To the extent, if any, that Seatrain's patents are of value, they are the property of Seatrain, and not of Hoboken. These patents can be considered only in a case where Seatrain's divisions are in issue. They are not an element of the cost or value of the service rendered by Hoboken for its Trunk Line connections which under their tariffs they are obligated to perform. The value of the right of use by Seatrain is reflected in its ability to obtain traffic in competition with the break-bulk steamship lines and the all-rail routes and to do business at a profit.

No loading or unloading of Seatrain traffic being necessary to place or receive it alongside ship, the eastern trunk line railroads have paid Hoboken on such traffic the divisional allowance of 60 cents a ton prior to March 28, 1938 and 63 or 66 cents a ton subsequent thereto (R. 111), which represents an increase of 215 and 230 percent, respectively, over the 20-cent per ton allowance in effect prior to July 1, 1918 (R. 113). If Hoboken's original divisional allowance of 20 cents had been increased in accordance with the general rate in-

creases and reductions authorized by the Commission, its present allowances would be 38, 40, or 42 cents, varying as to commodities and territorial application of the rates (R. 113).

In the complaint it is alleged that the Commission's finding that Hoboken's contractual payments to Seatrain are not transportation expenses which may properly be used in support of an allowance of increased divisions is based on the corporate relationship of Hoboken and Seatrain (R. 17). That the foregoing position of Hoboken is unsound is demonstrated by the language of the Commission's decision which shows that the contract was considered but held not to have conclusive and controlling evidentiary effect in the disposition of the issues presented (R. 48–49).

The corporate relationship of the contracting parties is of legal significance only to the extent that it explains the reason for the existence of the contract. Since the contract relates to services and facilities east of the interchange at the Seatrain car cradle and not to any service or facilities which the railroads, under their tariffs and the rates to be divided, are required to furnish and provide, there was no legal obligation on the railroads to assume the financial burdens of the contract. As found by the Commission, the contract was one which the Hoboken could not make a charge upon the trunk line railroads through the medium of increased divisions for the benefit of Seatrain because rail transportation under the

rates to be divided commenced or ended at the Seatrain car cradle alongside the vessel (R. 47). The situation would be exactly the same, and equally objectionable, if Seatrain were not the parent corporation and did not own a single share of Hoboken's capital stock. In either case the contract could not be used as a basis upon which Hoboken could properly make a charge upon connecting rail lines through the medium of increased divisions.

II

The Commission did not fail to make any essential finding required of it by statute

As stated, the lower court remanded the case to the Commission to make additional findings (R. 126), which we have set out at page 15 of this brief. The necessity for those findings, relating as they do to the so-called value of a contract between Hoboken and Seatrain covering the payment for services beyond the cradle, would become important in this case only if the Court were right on the law, a proposition which we have endeavored to refute. A reading of the report of the Commission will, we submit, convince the court that the Commission made sufficient findings. Among other things, the report reviews the control Seatrain has over Hoboken (R. 33); the investment in the crane (R. 34); the services performed by the Hoboken on Seatrain traffic from the hold yard to the cradle (R. 35); the divisions

that the Hoboken for many years has received out of the joint rates (R. 37); the services performed by the respective parties under the contracts between Hoboken and Seatrain (R. 38); the fact that other railroad lines are not required to make payments to Seatrain for their use of the same devices (R. 39); after a discussion of the evidence, a finding by the Commission that the present divisions "are sufficient to cover the cost of the service performed by complainant and also a reasonable return on the property owned or used by it in performing such service" (R. 41); a showing as to the rates of return of Hoboken compared with that of 10 New York harbor roads (R. 43–44); a description of the service which the railroads hold themselves out to perform under the lighterage-free rates (R. 47) and the finding made that "the rail lines do all that is required when they place the cars in or take them from the Seatrain cradle" (R. 47), a finding which the lower court held in accord with the evidence (R. 116). The report also gave consideration to facts and made findings on the matters which the lower court felt had not been covered in the report, viz (R. 48) whether, while the payments are not made for any service which the rail lines perform under the lighterage-free rates, there is any justification for such payments as compensation payable to Seatrain for the savings which it has accomplished for the rail lines by its new method of transfer, and the conclusion was reached "that the improved method of

transfer is only an incident to the Seatrain plan of transportation, and that the plan has sufficient advantages to impel its use and promotion by Seatrain regardless of any contributory payments from rail connections" (R. 48). The Commission also gave consideration to the question of whether the trunk lines receive an "unearned benefit," termed a "windfall" by the lower court (R. 117) as a result of the patented devices saving the trunk lines the performing of all the service which they hold themselves out to perform under the lighterage-free rates, and the conclusion reached that "those rates, however, are based on average conditions" (R. 48). The Commission further found that the payments which Hoboken makes under its contract with Seatrain cannot properly be regarded, under the evidence, as a necessary part of the costs of performing its portion of the through transportation service (R. 49), and if these payments are not included, the Hoboken is adequately compensated by its existing divisions. These subsidiary findings were followed by the Commission's ultimate finding (R. 49) that:

> We find, therefore, that complainant's divisions here in issue are not unjust, unreasonably low, inequitable, or unduly prejudicial to complainant and that the corresponding divisions received by the defendant rail lines are not unjust, unreasonably high, inequitable, or unduly preferential of them. The complaint will be dismissed.

It is alleged in the complaint (R. 16) that this action in dismissing the complaint constituted a failure on the part of the Commission to comply with the statutory duty to prescribe just and reasonable divisions of joint rates between the Hoboken and its trunk-line connections.

This argument, suggesting as it does that there is a mandatory duty imposed upon the Commission to prescribe divisions in each and every case, is not supported by the language of section 15 (6) of the Interstate Commerce Act, set out at page 59, Appendix.

Under the statute the Commission is required to prescribe divisions only when it is of the opinion that the divisions under consideration, whether agreed upon or otherwise established, are or will be "unjust, unreasonable, inequitable, or unduly preferential or prejudicial." In the instant proceeding, the Commission found "that complainant's divisions here in issue are not unjust, unreasonably low, inequitable, or unduly prejudicial to complainant, and that the corresponding divisions received by the defendant rail lines are not unjust, unreasonably high, inequitable, or unduly preferential of them," and dismissed the complaint (R. 49). "Since the appellee was not entitled to the relief sought and there was no wrong to be remedied or unlawful divisional basis to be corrected, the Commission left the parties in *status quo* and quite properly did not prescribe divisions. An order of the Com-

mission prescribing divisions in the "just, reasonable, and equitable" amounts voluntarily accorded by the trunk lines to the Hoboken would have been a vain and unnecessary act clearly beyond the contemplation of the statute.

The argument that there is no existing agreement or arrangement between the Hoboken and the trunk lines as to how the rates on Seatrain traffic not loaded or unloaded should be divided between them, even if true, is of no legal significance for the reason that the statute recognizes that divisions may be the subject of agreement "*or otherwise established,*" but in either event directs the Commission to prescribe divisions only when it finds they "are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial." As the amounts paid by the trunk lines to the Hoboken were found to be adequate and sufficient, the Commission was not under a duty to prescribe divisions and the only action required was dismissal of the complaint.

III

The order of the Commission is supported by substantial evidence

It is common practice in suits to enjoin Commission orders to broadly allege that the Commission's action is unsupported by the evidence, to refute which it is sometimes necessary to greatly extend the length of a brief. In this case, similar allegations are made. While the length of

a record is not necessarily controlling, the testimony before the Commission covers 320 pages of the printed record (R. 138–457), together with 50 exhibits (R. 457–617). The entire record is before this court. We have also the important fact that the finding of the Commission (R. 47) that the "rail lines do all that is required when they place the cars in or take them from the Seatrain cradle" was accepted by the lower court and held supported by the evidence (R. 116). Indeed the principal witness for the Hoboken, Mr. Graham Brush, stated that the point of delivery between the Hoboken and the Seatrain is the loading cradle which is ship sling for Seatrain (R. 345) and that "up to the present time, Seatrain and Hoboken have considered the cradle as the point of interchange" and no other points have been agreed upon (R. 345). See also (R. 385–386). The lower court also held there was no contention that the hearing before the Commission was not fair and adequate in every way (R. 115). Also, in no less than 7 paragraphs of its bill of complaint, paragraphs VIII–XIV, inclusive, Hoboken sets forth a review of the evidence before the Commission (R. 6–15), a summation, it is true, most favorable to it, but referred to here simply to show, in appellee's view, the wide scope of the hearing.

A. Specifically, it is alleged (Complaint (XVII–b) (R. 17) that the determination of the Commission that 60 cents per ton received by Hoboken on this interchange traffic con-

stituted adequate, just, and reasonable divisions, was arbitrary and without support in the evidence (R. 17). The Commission's report fully reviews the testimony and exhibits dealing with the question of costs, in fact the greater part of its report is devoted to this descussion (R. 40–45) and it was found that the division of 60 cents (at present 63 or 66 cents) was sufficient to cover the cost of the service of Hoboken and also provide a reasonable return on the property owned or used by it in performing the service (R. 41). In his argument before the Commission, counsel for Hoboken conceded that—

> if these payments by the complainant [Hoboken] to Seatrain may not fairly and properly, lawfully, be included as a part of the cost of the Hoboken for the purposes of divisions here, then the divisions which the defendants have so far allowed to the complainant are adequate division and we are not entitled to anything more (R. 619).

B. It is next alleged (complaint XVII–d) that there was no evidence to show that the corporate relationship between Seatrain and Hoboken was improperly availed of or that the contracts would not have been proper contracts under other circumstances. (R. 17). The Commission made no such finding as that complained of here. We have discussed this contention heretofore, pp. 42–43, and showed that to attempt to extend a common-carrier's obligation beyond the cradle is unlawful

and improvident, regardless of the corporate relationship of the parties.

C. Complaint is made (paragraph XVII–f.) that the Commission, in failing to find that on account of added traffic to Hoboken, there was sufficient consideration for the contract between Hoboken and Seatrain, acted arbitrarily and in disregard of the evidence (R. 18). This negative allegation presupposes that it was necessary for the Commission to make this finding. We have shown (pp. 43–47) that the Commission made all essential findings. The report of the Commission, based upon the record before it, reviewed the large amount of traffic handled by Seatrain in interchange with Hoboken (R. 36, 39) and such traffic, while undoubtedly beneficial and resulting in an increase in revenue to Hoboken, was also beneficial to Seatrain, causing the Commission to conclude the plan of operation "has sufficient advantages to impel its use and promotion by Seatrain regardless of any contributory payments from rail connections" (R. 48). The figures in this record showing the results of Seatrain's operations amply support this conclusion of the Commission. Furthermore, the Seatrain plan of operation was not new to the Commission, and since it was instituted in 1932, a great deal of litigation has been brought to the Commission. *Investigation of Seatrain Lines, Inc.*, 195 I. C. C. 215; *Seatrain Lines, Inc.*, v. *Akron, C. & Y. Ry. Co.*, 226 I C. C.

7; *Hoboken Mfrs. R. R. Co.* v. *Abilene & So. Ry. Co.*, 237 I. C. C. 97; 248 I. C. C. 109.

D. It is also alleged (complaint XVII–i) (R. 19) that the Commission "in substance" (R. 19) found, without evidence, that because Seatrain owns the stock of Hoboken, Hoboken could continue to expect that it would receive the benefits of the contract and use of Seatrain's patented devices without payment therefor (R. 19). The short answer is that the Commission made no such finding. We have heretofore shown why the contract should be disregarded despite the corporate relationship of the parties (pp. 42–43, *supra*).

E. The allegation (complaint XVII–j) (R. 19) that the Commission erred in concluding, without evidence, that "there is ample reason to conclude, also, that the improved method of transfer is only an incident to the Seatrain plan of transportation, and that this plan has sufficient advantages to impel its use and promotion by Seatrain regardless of any contributory payments from rail connections," apears to be a repetition of the contention answered in paragraph C of this chapter, p. 50, *supra*.

F. Lastly, it is urged that in dismissing the complaint the Commission is compelling Hoboken to perform transportation under the rates involved at less than its cost of so doing, contrary to the evidence (R. 20). This argument is fully dealt with in paragraph A of this chapter, pp. 48–49, *supra*.

It seems clear that the Commission's decision is supported by substantial evidence, in which case the courts will not weigh the evidence or substitute their judgment for that of the Commission. *Western Chemical Co.* v. *United States,* 271 U. S. 268, 271.

IV

The issue of confiscation

We believe that the allegation of confiscation (R. 20–21) rests upon the correctness of the Commission's holding that the amounts paid by the Hoboken to the Seatrain for the Seatrain's use of its patented device, were not properly a part of the Hoboken's operating expenses upon which it is entitled to a return in the consideration of its divisions (R. 41, 49). This was conceded by Mr. McCollester in his argument before the Commission (R. 619) where he stated:

> * * * On the other hand, if these payments by the complainant to Seatrain may not fairly and properly, lawfully, be included as a part of the cost of the Hoboken for the purposes of divisions here, then the divisions which the defendants have so far allowed to the complainant are adequate divisions and we are not entitled to anything more.

In addition to our prior discussion of this subject in Chapter I, we believe there is another answer to the charge of confiscation, and that is that the un-

supported allegations of the petition with respect to confiscation are not sufficient.

In the closely analogous divisions case of *Beaumont, S. L. & W. Ry. Co.* v. *United States,* 282 U. S. 74, the Court, in passing upon a claim the divisions there prescribed resulted in confiscation, used this significant language:

> Appellants claim that the Commission's order, if enforced, will operate to deprive them of their property without due process of law in violation of the Fifth Amendment to the Constitution.
>
> It is well-esta. ished by the decisions of this court that, in order to invoke such constitutional protection, the facts relied upon to prevent enforcement of rates prescribed by governmental authority must be specifically alleged and from them it must clearly appear that the enforcement of the measure complained of will necessarily deny to the utility the just compensation safeguarded to it by the Constitution. *Aetna Insurance Co.* v. *Hyde,* 275 U. S. 440, 447–8, and cases cited. Here the joint rates themselves are not assailed as too low, but the claim is that the prescribed divisions are confiscatory. The same rules as to pleading and proof apply to orders prescribing divisions as to laws fixing rates. There is no allegation in the complaint, or evidence in the record to show, that any division to any of the appellants will not yield operating expenses chargeable to the service covered by it plus a reasonable re-

turn on property value fairly attributable to that service. There is no foundation in the record for the contention (Id. 88–89).

The Commission did make the definite finding (R. 49) that if the royalty payments cannot be properly regarded as a necessary part of the cost of service, as found by it, "the conclusion is warranted by the record that complainant is adequately compensated by its existing divisions." That finding by the Commission has not been refuted.

Furthermore in the concurring opinion of Justice Brandeis (concurred in by three other Justices of this Court) in *Baltimore & Ohio Railroad Co.* v. *United States*, 298 U. S. 349, 381–392, it is conclusively shown why no charge of confiscation can be made in a divisions case where the joint rates sought to be divided are not attacked as unreasonable. We refer the court to the expression of these justices. They held in substance that the fault may not be in the divisions, but in the joint rates not attacked; such joint rates may be too low to afford to all participating carriers "just, reasonable, and equitable divisions." The joint rates between Hoboken and the Trunk lines are not under attack in this case, but only the divisions of those rates. For the reasons stated by the concurring justices in the case last referred to, as well as for the other reasons set forth above, there is no merit to the charge of confiscation.

V

The case is not moot

There remains for consideration the question of whether the case is moot because the vessels of Seatrain are not now operating but have been taken over by the Government for other purposes. None of the parties have expressed a desire to have the case disposed of as moot, and we are not now so contending, but we do feel the court should be apprised of the fact that on or about, February 1, 1942, service to Hoboken by Seatrain vessels was discontinued, and the vessels were placed in other Government service. Generally during the temporary lack of boat operation, the Commission has found that water carriers subject to its jurisdiction have attempted to keep their tariffs revised to reflect the general basis of rates of other carriers now handling the traffic which normally moves over the water routes. Such action assumes that the conditions which obtained prior to the cessation of boat service will recur when service is resumed. The same situation exists here. When the boats are returned to Seatrain, if the Commission's order is in effect, the parties can resume operations immediately and a known basis of divisions will exist.

The fact that all parties seek without delay a decision on the merits was given some weight by the Court in sustaining the constitutionality of the Recapture Clause of the Interstate Com-

merce Act, involved in *Dayton-Goose Creek Ry. Co.* v. *United States,* 263 U. S. 456, 475. In connection with this question of mootness, the court is referred also to its decision in *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission,* 219 U. S. 498, at which time orders of the Commission were limited to a period of two years, which had expired when the case reached this Court. In the *Southern Pacific Case,* the court held that the case was not moot where interests of a public character are asserted under conditions that may be immediately repeated, merely because the order had expired (pp. 515–516).

Also, an examination of Hoboken's complaint to the Commission will show that in addition to a new basis of divisions for the future, it also asked for an "adjustment" for the past (R. 26). Whether it is entitled to such "adjustment" cannot of course be determined if the case is held moot.

CONCLUSION

We submit that the lower court erred in ordering the case to be sent back to the Commission for evaluation of Seatrain's patent rights as an element for consideration in fixing Hoboken's divisions. Unless the Court is of the opinion that the Commission should be overruled on the factual question as to where the breaking point is located between rail and water service, and where the carriers' obligation under the rail rates to be

divided or under their primary divisions west of shipside at Hoboken end, the suggested procedure would be entirely futile. Stated otherwise unless the Court were to hold that the service covered by the rates or primary divisions received by eastern railroads (including Hoboken) embraces the service and facilities of Seatrain located east of the Seatrain car cradle and covered by the contractual payment of the Hoboken to Seatrain, reference of the case to the Commission appears idle. It is well settled that the courts will not substitute their judgment for that of the Commission on factual questions as to where transportation begins and ends, unless such finding is without support in or directly contrary to the evidence.

For the reasons above stated, we respectfully submit that the decision of the lower court should be reversed.

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Chief Counsel,
Of Counsel

APPENDIX

STATUTES

Declaration of Policy, added by the Transportation Act, 1940:

> It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discrimination, undue preference or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

Pertinent sections of the Interstate Commerce Act are:

SECTION 1 (4). It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto; and it shall be the duty of common carriers by railroad subject to this part to establish reasonable through routes with common carriers by water subject to part III, and just and reasonable rates, fares, charges, and classifications applicable thereto. It shall be the duty of every such common carrier establishing through routes to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operation, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof which shall not unduly prefer or prejudice any of such participating carriers.

SECTION 15 (6). Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be re-

ceived by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation) would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. In so prescribing and determining the divisions of joint rates, fares, and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 43.

INTERSTATE COMMERCE COMMISSION,
THE BALTIMORE AND OHIO RAILROAD
COMPANY, ET AL.,
Appellants,

v.

HOBOKEN MANUFACTURERS RAILROAD COMPANY,
Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

BRIEF FOR RAILROAD APPELLANTS, THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.

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Interstate Commerce Commission,
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BRIEF FOR RAILROAD APPELLANTS, THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.

OPINIONS BELOW.

The opinion of the specially-constituted District Court (R. 109), *Hoboken Manufacturers' R. Co.* v. *United States*, is reported in 47 F. Supp. 779.

The report of the Interstate Commerce Commission, dated July 24, 1939, in Docket No. 27630, *Hoboken Mfrs. R. Co.* v. *Akron, C. & Y. Ry. Co.*, appears in 234 I. C. C. 114 (R. 32).

JURISDICTION.

The jurisdiction of this Court is invoked in accordance with the authority contained in U. S. Code, Title 28, Sections 47a and 345, for the taking of a direct appeal to this Court from the final decree of a United States District Court, made pursuant to the provisions of U. S. Code, Title 28, Sections 41 (28), 43-48, enjoining, setting aside, annulling, or suspending in whole or in part an order of the Interstate Commerce Commission. The final decree of the District Court was entered on January 8, 1943 (R. 128). Petition for appeal was filed March 8, 1943, and was allowed on the same day (R. 2, 128, 132). Probable jurisdiction was noted by this Court on May 3, 1943 (R. 658).

STATEMENT OF THE CASE.

This is a direct appeal from the final decree of the specially-constituted District Court of the United States for the District of New Jersey which set aside an order of the Interstate Commerce Commission dismissing the complaint of Hoboken Manufacturers Railroad Company (hereinafter referred to as the Hoboken) for increased divisions out of certain rail rates on freight interchanged by the Hoboken with Seatrain Lines, Inc., hereinafter referred to as Seatrain. Appellants, on whose behalf this brief is presented are the principal eastern trunk line connections of the Hoboken who were defendants before

the Commission. They seek an order from this Court reversing the decree of the Court below and sustaining the Commission's order.

Proceedings Before the Commission and the Court Below.

The Hoboken on December 31, 1936, filed a complaint with the Interstate Commerce Commission alleging that the divisions it received out of joint class and commodity rates applicable on traffic interchanged at Hoboken, N. J., with Seatrain were, are, and will be unjust, unreasonably low, inequitable, and unduly prejudicial, and conversely that the divisions received by the eastern trunk line railroad defendants and their connections on such traffic were, are, and will be unjust, unreasonably high, inequitable, and unduly preferential in violation of Section 1 (4) of the Interstate Commerce Act (49 U. S. C. A. 1 (4)) (R. 22). The Commission was therein asked to exercise its power under Section 15 (6) of the Act (49 U. S. C. A. 15 (6))* to prescribe, for the past and the future, just, reasonable, equitable, and nonprejudicial and non-preferential divisions to be received by the complainant and defendants, respectively (R. 26). The Commission was called upon to consider only the divisions of rail rates and revenues as between the Hoboken and the eastern trunk lines for services performed by them on lighterage-free freight interchanged with Seatrain at Hoboken, N. J. (R. 33, 111, 150, 151, 617, 618).

* The pertinent provisions of the Interstate Commerce Act, here involved are reproduced in the Appendix, *infra*, p. 81.

Voluminous evidence, both oral testimony and exhibits, was presented at extended hearings before an Examiner of the Commission (R. 138, 616). Briefs were filed and an Examiner's proposed report containing recommended findings and conclusions was issued and served. Exceptions and replies to exceptions to the report were filed. Oral argument before the entire Commission was had (R. 32, 617). On July 24, 1939, the Commission made the report and order here involved which held against the Hoboken's contentions, and dismissed the complaint (R. 32, 642). Thereafter, Hoboken filed with the Commission a petition dated January 12, 1940, requesting reconsideration and reargument and defendants replied thereto. The aforesaid petition was denied by order dated April 1, 1940 (R. 5).

By petition filed on August 27, 1940, Hoboken brought suit in the Court below to enjoin, set aside, annul, and suspend the Commission's order of July 24, 1939 (R. 1, 2). After hearing, the specially-constituted District Court made its decision (R. 109), and entered findings of fact and conclusions of law (R. 119) and a final decree (R. 128) granting the injunctive relief sought by the Hoboken, appellee here.

NOTE: Since the principal facts material to the consideration of the questions here presented are contained and concisely stated in certain findings of the Commission, and were not challenged or disturbed by the Court below, those findings will be included herein and adopted without change as part of the Statement of the Case.

Description of The Hoboken.

"Complainant is a single-track terminal-switching line extending along the water front of Hoboken, N. J., a distance of 1.632 miles. At its northern end, approximately at the boundary between the cities of Hoboken and Weehawken, N. J., it connects with the Erie Railroad and through it with other trunk lines reaching New York Harbor. Since August, 1938, it has also had interchange with the Delaware, Lackawanna & Western Railroad through a float bridge. In addition to its main line, it has numerous yard tracks and sidings, a freight house, and team tracks. It serves numerous piers, at which various steamship lines regularly dock, and about 20 industries" (I. C. C. Report, R. 33).

Valuation of The Hoboken.

"The value for rate-making purposes of complainant's property, owned or used, devoted by it to common-carrier purposes, was $1,625,000 as of December 31, 1933. *Hoboken Mfrs. R. Co.*, 47 Val. Rep. 476. Retirements to December 31, 1937, exceeded additions and betterments by $9,862, leaving a valuation of $1,616,138 as of the latter date" (I. C. C. Report, R. 33).

Seatrain's Control of The Hoboken.

"All shares of complainant's capital stock, except five directors' qualifying shares, are owned by Seatrain. All of complainant's principal officers are officers of Seatrain, and six of complainant's seven directors are also directors of Seatrain" (R. 33).

"Seatrain acquired control of complainant April 26, 1932, following negotiations entered into some time previously with a view to the establishment of a terminal on complainant's line. Thereafter, in order to provide a terminal for Seatrain and accommodate its anticipated traffic, necessary rearrangements and improvements of complainant's facilities were made and a crane was installed for use in making interchange with Seatrain's vessels.[1] This crane, which, with its substructure, cost about $85,000, together with the pier on which it is erected and a slip alongside the pier at which Seatrain vessels are berthed, is leased by Seatrain from complainant" (R. 33-34).

Description of Seatrain.

"Seatrain is a common carrier by water subject to our jurisdiction under section 5 (19-21) of the Interstate Commerce Act., *Investigation of Seatrain Lines, Inc.*, 195 I. C. C. 215 and 206 I. C. C. 328. Since October 6, 1932, it has operated vessels, on which it transports freight in railroad cars, between Hoboken, N. J., and Belle Chasse, La., via Havana, Cuba. Belle Chasse is on the west bank of the Mississippi River about 10 miles south of New Orleans" (I. C. C. Report, R. 33).

Method of Loading Seatrain Vessels.

For a description of the method of interchanging freight with Seatrain the report of the Commission

[1] "The method of interchanging freight with Seatrain is described in *Investigation of Seatrain Lines, Inc.*, 195 I. C. C. 215, 219. Briefly, the cars are transferred between the railroad tracks and the vessel by use of a car cradle and crane" (I. C. C. Report, R. 34).

referred (R. 34) to its earlier report in *Investigation of Seatrain Lines, Inc.*, 195 I. C. C. 215, 219. For convenience that description is here quoted:

> "Seatrain vessels are approximately 480 feet long, with 63-foot beams, and have a speed of 16.5 knots, or better. They are ocean-going vessels built to specifications of Lloyds-Register and the American Bureau for World Wide Trade. While the original vessel has tank space for 2,200 tons of liquid cargo, and the new vessels have tank space for 4,000 tons of liquid cargo, each vessel is designed primarily for transportation of cargo only when loaded in railroad cars. Each vessel has four decks, and each deck has four sets of railroad tracks of standard gage, the aggregate length of tracks on each vessel being approximately 1 mile. The original vessel has a capacity of 95 cars, and each of the new vessels has a capacity of 100 cars. These vessels can handle cargo in railroad cars only between ports at which special loading facilities have been provided. Such facilities have been provided at only three ports, namely, Hoboken, New Orleans, and Havana.
>
> "The loading facilities consist of a combination elevator and crane, the elevator shaft being erected on the dock, and the stationary arms of the crane extending from the frame of the elevator shaft out over the slip. The floor of the elevator is a movable platform called a cradle on which is laid a single track of standard gage. The cradle, when in place on the dock, forms a section of the railroad track over which cars are moved to and from the cradle. The loading facilities at Havana and New Orleans are owned

by Seatrain. Those at Hoboken are owned by the Hoboken, and together with the pier and necessary supporting tracks are leased by Seatrain. Those at New Orleans are located on the property of the New Orleans & Lower Coast Railroad Company, a subsidiary of the Missouri Pacific, and those at Hoboken are located on the property of the Hoboken.

"In loading a Seatrain vessel a car is moved by locomotive over the railroad tracks of the Hoboken or the New Orleans & Lower Coast, as the case may be, and stopped on the section of track laid on the cradle where it is blocked and secured. The four corners of the cradle are connected to bails which in turn are attached to an overhead crane. The crane through the bails and cradle lifts the car vertically until the car and cradle are higher than the bulwark of the vessel. Car and cradle are then moved along the arms of the crane to a position over one of the four hatchways of the vessel and lowered through the hatchway which forms another elevator shaft, to one of the four decks on which the car is to be stowed. The cradle for the time being becomes a part of that particular deck, the tracks on the cradle articulating with the tracks on the deck to form a continuous track over which the car is moved from the cradle by a car puller to the desired position on the deck track, where it is secured and made fast to take care of motion of the ship while at sea. When a deck has been loaded the cradle is left in place and serves as a hatch cover for that deck. Unloading is the reverse of the process of loading. Often cars may be loaded

and unloaded at the same time. That is, the cradle instead of being hoisted out empty is loaded with a car, lifted out of the ship, moved along the crane arms to the elevator shaft over the dock, and lowered to position in the railroad track over which the car is moved from the cradle by a locomotive."

The opinion of the District Court summarizes the description of the method of loading Seatrain vessels as follows:

"When a Seatrain ship is put in position at its dock, it is next to a 'cradle' which, by means of a large overhead crane, lifts the loaded freight car from the dock and carries it through one of a number of large hatches on the ship to one of the tracks within the vessel. The tracks of the cradle fit the tracks on ship, and the car is then pushed off the cradle to its place on the ship by a special little engine. There is one cradle for each track on each deck of the vessel and, when the loading of each deck is accomplished, the cradles are left in place flush with the deck, each cradle closing a hatch. In taking the car from ship to shore the process is reversed. By the use of the Seatrain method, goods and merchandise may be transported from shore to ship and from ship to shore without breaking bulk, and the necessity of loading and unloading the freight is eliminated" (Opinion Court below, R. 110).

Photographs showing the method of loading Seatrain vessels appear at pages 462-468 of the Record.

Classes of Traffic Interchanged Between the Hoboken and the Trunk Lines.

"The traffic which complainant interchanges with defendants may be divided into four general classes: (1) Carload freight from and to private sidings and team tracks, which is loaded and unloaded at the consignees' expense, (2) less-than-carload freight from or to complainant's freight house, which is loaded or unloaded by complainant, (3) freight from and to steamship lines other than Seatrain, and (4) freight from and to Seatrain" (I. C. C. Report, R. 34).

The Rates to Be Divided.

The Commission was not asked to divide all the rail rates which applied on freight to and from Seatrain, but only those rates under which the railroads will deliver or accept freight at shipside. These are generally termed lighterage-free rates (R. 34, 46, 111). In addition to the above mentioned rail rates, to which Seatrain was not a party, the Commission was asked to divide the eastern rail portions of joint rail-water-rail rates in which Seatrain was a participant (R. 140, 280). At the time of the hearings before the Commission in 1938 there were in effect a few such joint rates from origins in the Southwest via Seatrain and Hoboken, N. J., to interior eastern destinations (R. 140, 618). In *Seatrain Lines, Inc.* v. *Akron, C. & Y. Ry. Co.*, 226 I. C. C. 7 (1938); 243 I. C. C. 199 (1940), the Commission by order effective May 1, 1941, prescribed joint rail-water-rail rates between eastern trunk line and New England territories and southwestern terri-

tory applicable via Seatrain lines and the rail line (including the Hoboken and the trunk lines) serving these territories (R. 643-646). Under the rail portions of these joint rates, the eastern rail lines perform the same services to and from shipside as under the lighterage-free rates, and the latter term will include such rail portions of such joint rates.

In I. C. C. Docket No. 28668, now pending, *Seatrain Lines, Inc.* v. *The Akron, Canton & Youngstown Railway Company et al.*, in which the Hoboken and the trunk lines are among the defendants named, Seatrain alleges that its divisions of such joint rates for its transportation by water of traffic handled in connection with the eastern rail lines via Hoboken, N. J., are unreasonably low, seeks increased divisions, and in support thereof relies in part upon the alleged labor-saving value of its special cradle and car elevator devices and patent (R. 643).

Rail Terminal Service Under Lighterage-Free Rates.

When lighterage-free rates are applicable, the railroads place the freight alongside the steamship within reach of the ship's tackle or receive the freight at the foot of the ship's tackle. If the steamship is of the ordinary cargo type, frequently referred to as a break-bulk carrier, the railroads at their expense load or unload the freight cars if necessary to placement or receipt of the freight at the foot of ship's tackle. Where it is done for them by the Hoboken, they compensate the latter therefor through divisions

of the freight revenue. The expense incurred in loading or unloading the ship is borne by the steamship line. On non-lighterage-free freight the railroads do not place or receive the freight at the foot of ship's tackle. On such freight the railroad cars are placed on the piers if they have railroad tracks, and if not, at the rail point nearest to shipside, and the cars are loaded or unloaded at the expense of the steamship line or others, and not at the expense of the railroads (R. 34, 47, 110, 114, 158).

The interchange services on lighterage-free freight at New York harbor are variable as to form and dependent upon various facts and conditions. The costs to the railroads for accomplishing such services are also variable. On lighterage-free freight interchanged with a break-bulk steamship the expense of loading or unloading the cars is borne by the trunk lines if such service is necessary to placement or receipt alongside vessel. Lighterage is frequently employed in the interchange of freight with break-bulk steamships not directly served by rail. Some steamships, such as those of the Pan-Atlantic S. S. Co., served by the Hoboken, dock at piers having rail connections, so that no lighterage service is performed. At certain railroad terminals, particularly on the New Jersey shore, freight in open-top cars is delivered direct to the vessel by being placed alongside ship within reach of ship's tackle. This does not entail any expense for either lightering or unloading of the car. In such cases, where lighterage-free freight

can be placed or received alongside vessel without unloading or loading, the railroads do not pay or bear stevedoring, loading, or unloading costs because there are none (R. 34, 46, 48, 158, 176-178, 418-420).

The Hoboken's Switching Service on Seatrain Traffic.

"Cars for Seatrain are placed in a hold yard a short distance from Seatrain's pier, which is approximately 2,500 feet from the point of interchange with the Erie. They are switched from the hold yard to the pier in the order designated by Seatrain, usually one at a time, and placed on the car cradle, where complainant's services terminate'* (I. C. C. Report, R. 35).

The Hoboken Divisions.

The Hoboken is a short terminal switching line, and has for many years participated in joint rates with the trunk lines and has received divisions thereof (R. 36).

On carload shipments loaded or unloaded by the shipper or consignee, or at their expense, the Hoboken's division prior to March 28, 1938,† was 60 cents per ton and, subsequent thereto, 63 or 66 cents per ton dependent upon the commodity. On carload shipments loaded to or unloaded from cars by the Hoboken when necessary to accomplish railroad acceptance or delivery of freight at shipside the Hoboken's division prior to March 28, 1938, was

* A corresponding service is performed in the reverse direction.

† The effective date of the 5 and 10 percent general increases authorized in *Ex Parte 123, Fifteen Percent Case*, 1937-1938, 226 I. C. C. 41.

$1.35 per ton, representing 60 cents for switching and 75 cents for loading or unloading. As a result of the *Ex Parte 123* increases these divisions became $1.42 and $1.49, respectively (R. 37).

Since the interchange of freight with Seatrain at Hoboken, N. J., is by loaded car, no loading or unloading at shipside is necessary. The trunk lines therefore have paid the Hoboken on such traffic 60 cents a ton prior to March 28, 1938, and 63 or 66 cents a ton subsequent thereto (R. 37-38, 46, 47).

The 63 and 66-cent allowances represent an increase of 215 and 230 percent, respectively, over the 20-cent per ton division in effect prior to July 1, 1918. If the Hoboken's original division of 20 cents had been increased in accordance with the general percentage rate increases and reductions authorized or required by the Commission, its divisions at the time of the hearings in 1938 would have been 38, 40, or 42 cents, varying as to commodities and territorial application of the rates (R. 427).

Divisions Sought By the Hoboken.

The Hoboken does not seek an increase in its division of 60 cents (exclusive of *Ex Parte 123* increases) on its rail traffic to and from private sidings, team tracks, and freight house, or on its non-lighterage-free freight interchanged with break-bulk steamships or with Seatrain. The claim for an increase from 60 cents to $1.35 is limited solely to lighterage-free freight interchanged with Seatrain (R. 34, 38). As found by

the Court below, "In the case at bar we are concerned only with the lighterage-free rate, and how it shall be divided between Hoboken and the trunk line carriers" (R. 111). On both the non-lighterage-free and on the lighterage-free traffic interchanged with Seatrain, the switching and terminal services of the Hoboken are identical (R. 38, 110). "With Seatrain freight regardless of how it is billed, whether as lighterage-free freight or non-lighterage-free freight, it is handled by Hoboken in precisely the same physical fashion" (R. 110). Under both types of rates, the freight remains in the railroad cars, and no loading or unloading expense is actually incurred by the Hoboken (R. 47).

The Hoboken's Payments to Seatrain.

The Hoboken's claim for increased divisions on lighterage-free freight interchanged with Seatrain, and which is neither loaded nor unloaded rests on certain payments made by the Hoboken to Seatrain (R. 38, 46).

> "Whether it is entitled to a greater division out of the lighterage-free rates depends in large part on whether certain payments which complainant makes to Seatrain may be properly included in its costs for performing its part of the rail transportation to and from Hoboken" (I. C. C. Report, R. 38).

> "The original contract entered into November 21, 1932, provided that complainant should pay Seatrain 40 cents per ton on all freight, other than coal, interchanged between them. A part of the

consideration for this payment was that Seatrain, as agent for complainant, should move the cars between complainant's hold yard and Seatrain's car cradle, the agreed point of interchange. This contract was superseded effective March 1, 1937, by a contract, still in effect, which provides that complainant shall pay Seatrain 73 cents per ton[3] on all freight interchanged between them which moves on lighterage-free rates but nothing on freight moving on non-lighterage-free rates. Under this contract Seatrain does not move the cars between complainant's hold yard and the car cradle, all such service being performed by complainant. The underlying justification for these payments is that, as it is not necessary to load and unload freight to and from railroad cars in making interchange with Seatrain, defendants are relieved of an expense of 75 cents per ton for loading or unloading which they incur when freight moving under lighterage-free rates is interchanged with other water carriers, and that, as this saving is possible because of Seatrain's investment and use of patented devices, such saving should accrue to Seatrain and not to defendants" (I. C. C. Report, R. 38-39).

"It appears from the Commission's report that Hoboken paid Seatrain $110,000 in 1936, pursuant to the provisions of the 1932 contract; that in 1937 Hoboken paid Seatrain approximately $100,000" (Opinion Court below, R. 114).

Seatrain's Patent.

"Seatrain vessels and loading devices are not patented, but the idea embodied by the Seatrain

[3] "Subject to revision because of increase or decrease in the scale of longshoremen's wages but not as yet revised" (I. C. C. Report, R. 38).

vessels for carrying cars and for transferring cars from railroad tracks or from the deck of another ship to tracks laid on Seatrain vessels is patented. Seatrain has the exclusive right to use these patents."*

Witness Brush, President of Seatrain and the Hoboken, after describing the patent as "a combination patent," stated:

> "A. In other words, it is not a vessel, it is not a terminal, it is not a crane; it is a combination of various devices which, when all put together, form the Seatrain terminal and ship" (R. 227).
>
> * * * * * *
>
> "The Seatrain patent is a combination patent. Before you run into that patent you would have to pick up a car and put it inside of a ship or inside of a ship structure and the ship would have to be equipped to take the car. In other words, the patent is a ship's equipment to load cars on its various decks by various means so that cars may be received from railroad tracks on the dock or from another ship and transferred to the ship's equipment."
>
> * * * * * *
>
> "The crane itself is not patented. It is the use of the crane in connection with the ship" (R. 372).

The Seatrain patent is owned by Railway Transports, Inc., and Seatrain as the exclusive licensee pays royalties of approximately $50,000 a year (R. 39).

* Investigation of Seatrain Lines, Inc., 195 I. C. C. 215, 220, to which the Commission's report refers (R. 34) for a description of the method of loading Seatrain vessels.

"The patents expire in 1944"† (Opinion Court below, R. 112).

The Hoboken's Switching Costs.

"Complainant shows its average costs for switching all cars, including those containing less-than-carload freight, in 1936 and 1937. These costs include all taxes, other than those billed to Seatrain, the net amounts paid for all rents, including those for all leased road, and all interest on indebtedness, but do not include payments of 40 or 73 cents per ton to Seatrain or expenses incurred in connection with the handling of freight. The total costs were divided by the number of all loaded cars handled in common-carrier service, 14,961 in 1936 and 15,799 in 1937, and also by the number of tons handled, 411,757 in 1936 and 431,252 in 1937. The average costs so determined were $15.34 per car and 55.7 cents per ton in 1936 and $16.11 per car and 59 cents per ton in 1937. The average loading was 27.5 tons in 1936 and 27.3 tons in 1937" (I. C. C. Report, R. 40).

The Hoboken's Revenues.

"Assuming that all items included in the costs are properly so included, and, as complainant assumes, that its average costs for switching

† This statement of the Court was apparently taken from the Commission's finding (R. 39) that the Seatrain patents "will expire in about 6 years" (presumably from the time of the hearing in 1938) which finding was predicated upon a rather indefinite statement in this respect of Witness Brush (R. 371). Although not a matter of record, in the interest of accuracy, it is a fact that U. S. Patent No. 1,591,278, issued July 6, 1926, to Graham M. Brush, covering the Seatrain devices and method of operation and which was assigned by him to Railway Transports, Inc., expired July, 1943.

all cars reflect its costs for the movement here involved, its costs are less than its divisions of 60 cents per ton prior to the increases in *Ex Parte No. 123*, and 63 and 66 cents per ton since, and less than its revenues per car under such divisions. As previously stated, the average loading of the 2,961 carloads interchanged by complainant with Seatrain and defendants during the six alternating months of 1936 and 1937 was 28.5 tons. Other evidence of record indicates that the average loading of Seatrain traffic interchanged with defendants is approximately 30 tons. Complainant's revenues per car under the 60-cent division would be $17.10 and $18 based on average weights of 28.5 and 30 tons. The present divisions of 63 and 66 cents would have averaged 65.48 cents per ton on the 2,961 carloads referred to above. Based on that average, complainant's revenues per car of 28.5 tons and per car of 30 tons would be $18.66 and $19.64 respectively" (I. C. C. Report, R. 40).

"The fixed charges for rent of road and interest on indebtedness included by complainant in its costs were $54,729.60 in 1936 and $59,149.86 in 1937. If there were substituted for these fixed charges $80,806.90, which is a 5-per cent return on the value of the property owned or used by complainant and devoted to common carrier purposes, $1,616,138 as of December 31, 1937, the average cost for switching of cars would have been $17.08 in 1936 and $17.50 in 1937, as compared with revenues of $17.10 per car of 28.5 tons under the 60-cent division and $18.66 under an average division of 65.48 cents" (I. C. C. Report, R. 40-41).

"The record warants the conclusion that the former division of 60 cents and the present divisions of 63 and 66 cents are sufficient to cover the cost of the service performed by complainant and also a reasonable return on the property owned or used by it in performing such service" (I. C. C. Report, R. 41).

After an extended analysis of the Hoboken's revenues and expenses, the Commission found that the Hoboken was operating at a profit if the payments to Seatrain were not taken into account (R. 41-44). The Court below accepted the Commission's finding on this point (R. 114, 124).

The Unfavorable Financial Condition of the Trunk Lines.

"As contrasted with complainant's income accounts for 1936 and 1937 as adjusted by it and as further adjusted, the net railway operating income for 10 New York Harbor railroads[4] show a rate of return on investment in railway property used in transportation ranging from nothing to 3.23 percent in 1936 and from nothing to 2.72 percent in 1937, and for the 10 roads as a whole 2.67 percent in 1936 and 2.21 percent in 1937. Four of the ten roads, namely, the Erie, the New Jersey & New York, the New York, Ontario & Western, and the New York, Susquehanna & Western are in bankruptcy" (I. C. C. Report, R. 44).

[4] "Baltimore & Ohio; Central Railroad of New Jersey; Delaware, Lackawanna & Western; Erie; Lehigh Valley; New Jersey & New York; New York Central; New York, Ontario & Western; New York, Susquehanna & Western; and Pennsylvania" (I. C. C. Report, R. 44).

The Hoboken's Revenue Under Claimed Division.

"Complainant also shows that during the months of March and September it interchanged with defendants 1,102 carloads of Seatrain traffic and that the average loading of these cars was 30.9 tons, the average rail haul 258 miles, and the average revenue $120.86 per car. Complainant's revenue on such traffic at 60 cents per ton was $18.54 per car and 15 percent of the total revenue. On the basis of a division of $1.35 it would have been $40.72 per car, leaving slightly less than two-thirds of the total revenue to defendants for their 258-mile haul and terminal service at origin" (I. C. C. Report, R. 45).

There are numerous instances where a division of $1.35 per ton would have accorded the Hoboken more than half of the total rail revenue to be divided between the Hoboken and the trunk lines. For example, on 25 cars of wire and wire articles from Allentown, Pa., to Hoboken, N. J., the total rail revenue, at a lighterage-free rate of $1.80 per ton, amounted to $1,341.36, of which the Hoboken's share would have been $952.09, or 71 percent, on the basis of the claimed division of $1.35 per ton (R. 580, 593, 428-429, 433, 456).

NOTE: To avoid needless repetition, such additional facts as are necessary to the Argument will be included therein with appropriate record references.

SPECIFICATION OF ASSIGNED ERRORS TO BE URGED.*

The District Court erred:

1. In not dismissing the petition of plaintiff herein.

2. In setting aside the Commission's order of July 24, 1939, involved in this case.

3. In substituting its judgment for that of the Commission upon an administrative matter.

4. In directing the Commission to reinstate the proceedings before it, to reconsider its decision, to make findings of fact as indicated in the opinion of the Court, and to issue and enter a report in the proceedings and make such an order or orders therein as may be required by law.

5. In finding and holding that the Interstate Commerce Commission failed to make all essential findings.

6. In holding that the Commission did not determine a division of the rates which would not be unduly prejudicial or preferential to any of the parties.

7. In concluding as a matter of law that the Commission did not carry out the duty imposed upon it by statute in a divisions case.

* (R. 129-132).

8. In not holding that the Commission's findings are supported by substantial evidence.

9. In entering the findings of fact and conclusions of law which it made in this case.

10. In inconsistently granting an injunction setting aside the Commission's order of July 24, 1939, involved in this case, after holding (*a*) that the railroad-appellants perform the service which they hold themselves out under the lighterage-free rates to perform when they place the cars at the cradle or receive them from the cradle; (*b*) that the proceedings before the Commission were fair and adequate in every way; (*c*) that the question of where transportation ends is an administrative question; (*d*) and that the Commission's finding that the payments made by Hoboken to Seatrain do not constitute a legitimate rail transportation cost, being supported by evidence, is final.

11. In finding and holding that the Interstate Commerce Commission failed to give due consideration to the matters specified in the statute (49 U. S. C. Sec. 15 (6)) and failed to consider, find, and determine what divisions of the railroads' lighterage-free rates were and would be just, reasonable, and equitable as between the carriers parties thereto.

12. In holding that the Commission did not make a finding "as to whether or not reasonable payment to Seatrain for the benefits derived by Hoboken and

through Hoboken by the trunk lines from the interchange with Seatrain and the use by Seatrain of its patented devices in connection therewith, is part of Hoboken's costs of operation under efficient operation in the transfer of freight between the trunk lines and Seatrain."

13. In concluding and holding that if the Commission should find that the Seatrain devices are an efficient aid to railroad transportation, the Commission should evaluate the worth of the devices to Hoboken and a legitimate payment therefor, including in the base upon which Hoboken's fair return is calculated the true value of the Seatrain devices.

14. In finding and concluding that as a further ground for its decision "the Commission found that the payments might be justified as a part of Hoboken's expense if they were 'necessary for the purpose of inducing the establishment of the new method of transfer,' * * *."

15. In finding that Hoboken makes Seatrain its agent to put the cars upon and take them off the cradle.

16. In holding that the Commission erred in failing to make an equitable division of "the 75¢ saving occasioned by the inter-connection with Seatrain."

17. In finding and holding that the Commission failed to find and "determine what would be reason-

able and fair compensation in the light of efficient management and operation of Hoboken's properties."

18. In concluding that Hoboken has the right under its contract with Seatrain to use the Seatrain devices "to fulfill its obligations of carriage," thereby substituting its judgment for that of the Commission as to the scope of Hoboken's said obligations.

19. In holding that there was no evidence presented to the Commission "to show that the granting of the entire saving of the loading or unloading of the cars was not an undue emolument for the trunk line railroads."

SUMMARY OF ARGUMENT.

The Hoboken, a short switching railroad on the New Jersey shore of New York Harbor, brought a complaint before the Interstate Commerce Commission seeking the prescription of increased divisions out of the lighterage-free rail rates to and from Hoboken, N. J., when applied on traffic interchanged with Seatrain, a common carrier by water and its parent company. Its case centered upon the insufficiency of its existing divisions to reimburse it for certain payments to Seatrain under an agreement, to which the defendant trunk lines were not parties, made subsequent to the filing of its complaint, and upon the fact that if, by the operation of such increased divisions and the agreement with Seatrain, the trunk lines were not

required to contribute to Seatrain therefor, they would gain some unearned benefit from Seatrain's use of its car, crane or ship-loading device by escaping expense for loading and unloading cars of lighterage-free freight interchanged with Seatrain. The Hoboken made no payment to Seatrain in respect of non-lighterage-free freight, and asked no increase in its divisions of the rail rates thereon, although its service in interchanging with Seatrain was identical in both cases. The Commission found that rail transportation under the rates to be divided began or ended with placement or receipt of the car by the Hoboken at the Seatrain cradle, and that the payments by the Hoboken to Seatrain covered no part of the costs of rail transportation. It further found that the Hoboken's existing divisions were not unjust, unreasonably low, inequitable, or unduly prejudicial to it, and that the corresponding divisions received by the defendant rail lines were not unjust, unreasonably high, inequitable, or unduly preferential of them. It ordered the complaint dismissed.

The District Court accepted as final and conclusive the Commission's findings that rail transportation did not extend beyond the point of interchange at the cradle and that the Hoboken's payments were not a part of the costs of rail transportation, but nevertheless set aside the order and remanded the case to the Commission for further proceedings on the ground that the Commission failed to fix divisions for the Hoboken which would allow it an equitable and non-prejudicial

proportion of the so-called "windfall" accruing to the railroads on traffic so interchanged by reason of the absence of expense to them for loading or unloading cars at the port.

The argument of these railroad appellants, defendants in the case before the Commission, may be summarized as follows:

I. In the exercise of its power under Section 15(6) of the Interstate Commerce Act to prescribe reasonable and equitable divisions of joint rates, the Commission made administrative findings of fact that rail transportation under the rates to be divided began or ended at the cradle, and that the payments to Seatrain were not part of the costs of the rail service. Although accepting these findings as conclusive upon it, the District Court set aside the Commission's order, holding that the Commission should have given weight, in the fixation of the Hoboken's divisions, to matters which were beyond the scope of the rates to be divided, and thereby substituted its judgment for that of the Commission in an administrative matter, which it may not lawfully do.

II. The Commission's findings which the District Court accepted as final required the dismissal of plaintiff's petition, and the Court erred in remanding the case to the Commission. The Commission had found that rail transportation, under the rates to be divided, begins or ends at the Seatrain cradle, and that the payments by the Hoboken to Seatrain cover no part

of the rail service. These findings were of an administrative character and were binding upon the Courts. *Armour & Co.* v. *Alton R. R. Co.*, 312 U. S. 195; *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402. These findings the District Court accepted as final. The rail rates which the Commission was asked to divide were applied on certain rail-water traffic interchanged with Seatrain, and it became necessary for the Commission to determine the boundary between such rail and water transportation in order to determine whether the payments made Hoboken to Seatrain were properly a part of rail transportation costs or were a part of the costs of water transportation. The whole case before the Commission turned on the question whether the payments to Seatrain were a part of the rail transportation costs for which the Hoboken was entitled to reimbursement by the trunk lines by way of increased divisions. The Hoboken conceded that its existing divisions were adequate if the payments were not properly includible in the rail costs. The Commission's findings on the subject were therefore determinative of the case, and the District Court, having accepted them as conclusive, should have dismissed plaintiff's petition.

III. The District Court, due to its misconstruction of the Commission's report and its misunderstanding of the facts on which the Commission acted, erroneously concluded that the Commission did not determine the "*quantum meruit*" of the Hoboken-

Seatrain relationship or the proper apportionment of the so-called "windfall" to the railroads by reason of the absence of expense to them for loading or unloading cars of freight interchanged with Seatrain. Contrary to the Court's assumptions, the car crane at Hoboken, N. J., was leased, operated, and used exclusively by Seatrain, and is the equivalent of ship's tackle, and the Hoboken did not secure, by its payments to Seatrain, the actual performance of any rail transportation service which it was obligated to perform under the rail rates. The lighterage-free rates involved did not require the eastern railroads to load, unload, or to lighter freight in New York Harbor, when to be interchanged with water carriers, except to the extent necessary to accomplish receipt or delivery of freight at shipside. The lack of expense for loading or unloading freight interchanged with Seatrain in cars was therefore not a "windfall" in any true sense. Had the Commission sustained the Hoboken's complaint the effect would have been to impose upon the trunk lines the expense of loading and unloading Seatrain's vessels. But if, contrary to fact, there were such a "windfall," it would be a matter for division as between the eastern railroads and *Seatrain*, which is not a carrier by railroad and not a party to the proceeding. Seatrain now has pending before the Commission a case of this nature, which is a complaint seeking the prescription of divisions, as between itself and the railroads, of joint rail-water rates, in which it asks that the divisions to be fixed

take into consideration such economies in terminal services as may result to the railroads from its use of its ship-loading devices. But assuming, *arguendo* that there was a "windfall" for division between the Hoboken and the trunk lines in the instant proceeding, the Commission's finding and order in the case made an equitable and non-prejudicial division of it.

IV. The District Court erred in holding that the Commission failed in its statutory duty to prescribe just, equitable, and non-prejudicial divisions. The Hoboken presented its case on the theory, which the Commission here accepted, that it should receive as a division a uniform amount per ton without particular regard to the balances remaining to the trunk lines. The Commission found that the Hoboken's existing divisions were sufficient to cover the cost of the service performed by it and also a reasonable return on the property owned or used by it in performing such service, and also found that complainant's existing divisions, all things considered, were not unjust, unreasonably low, inequitable, or unduly prejudicial as to it, or unreasonably high, or unduly preferential as to the defendants.

V. The District Court erred in directing the Commission in this case (to which Seatrain is not a party) to find whether the Seatrain devices are an efficient aid to railroad transportation, to evaluate their worth to the Hoboken and a legitimate payment therefor, to include in the base upon which the Hoboken's fair

return is calculated the true value of the Seatrain devices, and to set the value of the contract and the Seatrain devices to the Hoboken. The Seatrain devices and the contract were of no value to the Hoboken in the performance of rail transportation service under the rates to be divided, and the Commission so found. As the devices were Seatrain's, and were not used by the Hoboken, the Commission could not properly value them in the base upon which the Hoboken's fair return is calculated. Any valuation of Seatrain's devices for determining divisions would have to be in some case, such as Seatrain's pending divisions complaint, where Seatrain and the trunk lines were parties. This is not such a case.

ARGUMENT.

I. THE DISTRICT COURT ERRED IN SUBSTITUTING ITS JUDGMENT FOR THAT OF THE COMMISSION IN AN ADMINISTRATIVE MATTER.*

The Commission found that rail transportation under the lighterage-free rates to be divided began or ended at the Seatrain car cradle and that the payments made by the Hoboken to Seatrain should be excluded from the Hoboken's operatings costs in the determination of divisions. *Both of these findings were accepted by the District Court as conclusive.* It necessarily followed from these findings that the Hobo-

* This point is supported by Assignments of Error Nos. 1, 2, 3, 4, 6, 7, 9, 10, 11, 13, 18, and 19 (R. 129-132).

ken was not entitled to increased divisions, and the Commission so found. The Court disagreed with the Commission's conclusion and held that it was the duty of the Commission in determining divisions to give weight to matters which are no part of the Hoboken's rail service under the rates to be divided. In so doing it substituted its judgment for that of the Commission in an administrative matter.

The divisions complaint of the Hoboken involved the exercise of the Commission's power under Section 15(6) of the Interstate Commerce Act, 49 U. S. C. 15(6). The prescription of divisions of joint rates under this statute has been held by this Court to be a legislative function. *Baltimore & Ohio R. R.* v. *United States*, 298 U. S. 349, 356. *Terminal R. R. Assn.* v. *United States*, 266 U. S. 17, 30. *Louisville & Nashville R. Co.* v. *Garrett*, 231 U. S. 298, 305, 307.

The law bearing upon the scope of judicial review in these circumstances is well settled by decisions of this Court.

The Courts, in reviewing orders of the Commission, may not consider the weight of the evidence, the wisdom of the Commission's action, or the soundness of reasoning by which the Commission reached its conclusions. *New England Divisions Case*, 261 U. S. 184, 204; *Virginian Ry.* v. *United States*, 272 U. S. 658, 665, and *Chicago, R. I. & P. Ry.* v. *U. S.*, 274 U. S. 29, 33.

Furthermore, the findings and conclusions of the Commission, made after hearing, are final and con-

clusive if supported by substantial evidence and sustainable on any rational basis, unless there was some irregularity in the proceeding, or some error in the application of the rules of law. *Int. Com. Comm.* v. *Union Pacific R. R.*, 222 U. S. 541, 547; *United States* v. *Louis. & Nash. R. R.*, 235 U. S. 314, 321; *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457; *Western Chem. Co.* v. *United States*, 271 U. S. 268, 273; *United States* v. *Erie R. Co.*, 280 U. S. 98, 102; *Rochester Tel. Corp.* v. *U. S.*, 307 U. S. 125, 139, and *Board of Trade* v. *United States*, 314 U. S. 534, 546.

The limitations of judicial review of orders of the Commission were stated in *Rochester Tel. Corp.* v. *U. S.*, *supra*, at pages 139 and 140, as follows:

> "Even when resort to courts can be had to review a Commission's order, the range of issues open to review is narrow. Only questions affecting constitutional power, statutory authority and the basic prerequisites of proof can be raised. If these legal tests are satisfied, the Commission's order becomes incontestable. *Interstate Commerce Comm'n* v. *Illinois Central R. Co.*, 215 U. S. 452, 470; *Interstate Commerce Comm'n* v. *Union Pacific R. Co.*, 222 U. S. 541."

In the case just cited, at page 146, it is said:

> "'The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body.' *Mississippi Valley Barge Line Co.* v. *United States*, 292 U. S. 282, 286-287; *Swayne & Hoyt, Ltd.* v. *United States*, 300 U. S. 297, 303, *et seq.*"

II. THE COMMISSION'S FINDING THAT THE PAYMENTS TO SEATRAIN WERE NO PART OF THE COSTS OF RAIL TRANSPORTATION, WHICH THE COURT ACCEPTED AS FINAL, NECESSARILY REQUIRED THE DISMISSAL OF PLAINTIFF'S PETITION, AND THE COURT ERRED IN REMANDING THE CASE TO THE COMMISSION.*

A. The Commission Found that Rail Transportation Begins or Ends at the Seatrain Cradle, and that the Payments by the Hoboken to Seatrain Cover No Part of the Rail Service.

On the evidence presented the Commission made the following findings of fact:

> "The service which the railroads hold themselves out to perform under the lighterage-free rates includes the unloading of inbound cars and the placing of the lading within reach of the ship's tackle and a corresponding but reverse service in connection with outbound freight. For purposes of its own, Seatrain prefers to receive and deliver the loaded car. The unloading or loading of the car lading and its delivery or receipt at ship's tackle is therefore unnecessary. The rail lines do all that is required when they place the cars in or take them from the Seatrain cradle. From this point of view the payments which complainant makes to Seatrain cover no part of its transportation service under the lighterage-free rates and are in addition to the full costs of that service" (R. 47).

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*This Point is supported by Assignments of Error Nos. 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, and 19 (R. 129-132).

B. The District Court Accepted as Final and Conclusive the Commission's Findings That Rail Transportation Begins or Ends at the Seatrain Cradle and that the Hoboken's Payments to Seatrain Covered No Part of the Costs of Rail Transportation.

The District Court accepted the above-indicated findings of the Commission as conclusive. Thus at Record pages 115-116 it held as follows:

> "Admittedly the Commission as the trier of fact must determine the point at which the transportation service of the railroad is completed and, if the Commission's finding in this respect is supported by substantial evidence, the parties and this court are bound upon it. The question of where transportation by rail ends is an administrative question. *Atchison, T. & S. F. Ry.* v. *United States*, 295 U. S. 193, 201; *United States* v. *American Sheet & Tin Plate Company*, 301 U. S. 402; *United States* v. *Pan American Petroleum Corporation*, 304 U. S. 156. Even though we might reach a different conclusion, if there is evidence to support the Commission's findings, its order must be sustained. *New England Division Case*, 261 U. S. 184, 204; *Seaboard Airline Ry. Co.* v. *United States*, 254 U. S. 57, 62. The finding by the Commission that rail transportation ends at the cradle when Hoboken has put the car consigned for Seatrain upon it and begins at the cradle when the movement is reversed is fully supported by the evidence. The contract of November 21, 1932, between Hoboken and Seatrain expressly so provided, and the contract of February 24, 1937, now in force between Hoboken and Seatrain, makes no substantial change

in this respect although Hoboken makes Seatrain its agent to put the cars upon and take them off the cradle. Since, as the Commission determined, transportation ends at the cradle, Hoboken completes its obligation under the lighterage-free tariff when it delivers the cars to the cradle. The Commission, therefore held that the payments by Hoboken to Seatrain do not constitute a legitimate transportation cost. Upon this findings, supported by evidence, its judgment is final. *United States* v. *Pan American Petroleum Corporation*, 304 U. S. 156."

C. The Commission's Findings on These Matters Required the Dismissal of the Complaint.

1. THE COMMISSION WAS ASKED TO DIVIDE RAIL RATES APPLIED ON RAIL-WATER TRAFFIC, AND NECESSARILY DETERMINED WHERE RAIL TRANSPORTATION BEGAN OR ENDED.

By its complaint before the Commission (R. 22) the Hoboken sought increased divisions on only a portion of its traffic. Thus, it asked no increase in its divisions on carload freight from and to private sidings and team tracks, on less-than-carload freight from or to its freight house, or on freight from and to steamship lines other than Seatrain. Nor did it seek increased divisions on such of its freight from and to Seatrain as moved under non-lighterage-free rates. But it sought an order requiring the trunk lines to accord it increased divisions out of the lighterage-free rail rates applied on its Seatrain traffic and out of the revenues accruing to the eastern railroads out of joint rail-water or rail-water-rail rates in connection with

Seatrain (R. 140). Since such rates and revenues accrued to the railroads out of rail-water traffic,* and since in the division of such rates and revenues the respective service contributions of the participants is a primary consideration,† it was incumbent upon the Commission to determine the physical extent of the transportation service comprehended under such rail rates and revenues.

This necessity of determining the scope and coverage of the rail factors to be divided obtained equally in the case of joint rail rates to and from Hoboken, N. J., to which Seatrain was not a party, and in the case of the joint rail-water rates in which Seatrain was a participant. The fact that Seatrain was not named as a party to the Hoboken's complaint did not prevent the Commission from fixing the subdivision as between the Hoboken and the trunk lines of the primary rail divisions without reference to the balance of the joint rates by water beyond. This point has been specifically ruled in *Beaumont, S. L. & W. Ry.* v. *United States*, 282 U. S. 74, 89-90.

2. The Whole Case Turned on the Question Whether the Payments to Seatrain Were a Part of the Rail Transportation Costs.

The Hoboken presented its claim for increased divisions on the theory that it was a short switching line and, as such, was entitled to divisions which would fully reimburse it for all transportation costs plus a

* For convenience the expression "rail-water" traffic will be understood as including also water-rail and rail-water-rail traffic.

† New England Divisions, 66 I. C. C. 196, 198.

fair return (R. 46, 47). The importance of the Hoboken's payments to Seatrain, in connection with the determination of legitimate operating costs, was emphasized by the Hoboken's counsel at the hearings before the Commission (R. 154, 215, 219), and upon argument before the Commission he stated (R. 618-619) in part:

> "There is a fundamental issue in the case * * *. That issue is whether for the purpose of determining the divisions to be received by the Hoboken or the divisions to be retained by the defendants. There may properly be included in the Hoboken's costs of operation certain payments which the Hoboken makes to Seatrain Lines under a contract between the complainant and Seatrain."
>
> * * * * * * *
>
> "* * * *If these payments by the complainant to Seatrain may not fairly and properly, lawfully, be included as a part of the costs of the Hoboken for the purposes of divisions here, then the divisions which the defendants have so far allowed to the complainant are adequate divisions and we are not entitled to anything more.*"

The Commission recognized the question whether the Hoboken's payments to Seatrain constituted payment for rail transportation to be one of the controlling factors in determining whether the Hoboken was entitled to increased divisions, saying (R. 38):

> "Whether it is entitled to a greater division out of the lighterage-free rates, depends in large part on whether certain payments which complainant

makes to Seatrain may be properly included in its costs for performing its part of the rail transportation to and from Hoboken."

3. THE COMMISSION'S FINDING THAT THE PAYMENTS WERE NO PART OF THE RAIL TRANSPORTATION COSTS WAS DETERMINATIVE OF THE CASE.

The Commission's findings that rail transportation under the rates to be divided began or ended at the Seatrain cradle and that the Hoboken's payments to Seatrain constituted no part of the rail transportation costs—which findings the Court held were conclusive—were determinative of every issue presented in the case.

Since the Commission's authority to prescribe divisions was invoked only in respect of the division of rail rates and revenues as between participating rail carriers, its determination of the physical limitations of rail transportation and of the extent of the railroads' obligations under such rates, together with its finding that the payments made by the Hoboken to Seatrain were not in any way attributable or allocable to rail transportation as cost thereof, left no alternative to the Commission but to dismiss the complaint.

D. Having Accepted As Conclusive the Controlling Findings in the Case, As Made by the Commission, the District Court Should Have Dismissed Plaintiff's Petition.

The District Court, having sustained these findings of the Commission, which were controlling in the

case, should have dismissed plaintiff's petition. The District Court, however, as will subsequently be noted, by reason of its misconstruction of the Commission's report and its misunderstanding of the facts with which the Commission dealt, went beyond the proper scope of judicial review, and, while disavowing any intent so to do, actually substituted its judgment for that of the Commission in an administrative matter in that its decree remanding the case to the Commission in effect requires the Commission to give some weight in the fixing of divisions to the Hoboken's payments to Seatrain.

III. THE DISTRICT COURT, DUE TO ITS MISCONSTRUCTION OF THE COMMISSION'S REPORT AND ITS MISUNDERSTANDING OF THE FACTS, ERRONEOUSLY CONCLUDED THAT THE COMMISSION DID NOT DETERMINE THE "*QUANTUM MERUIT*" OF THE HOBOKEN-SEATRAIN RELATIONSHIP OR THE PROPER APPORTIONMENT OF THE "WINDFALL."*

A. The Decision of the District Court Is Based Upon a Misconstruction of the Commission's Discussion of the Question Whether Payments to Seatrain Might Be Justified For the Purpose of Inducing the Establishment of Seatrain's New Method of Transfer.

Since the Court accepted as final the Commission's findings as to the limits of rail transportation service

* This point is supported by Assignments of Error Nos. 5, 6, 7, 8, 9, 11, 12, 14, 15, 16, 17, 18, 19 (R. 129-132).

under the rates to be divided and with respect to the exclusion of the Hoboken's payments to Seatrain from the legitimate costs of its rail service, it is apparent from an examination of the opinion and findings of the District Court that its decision rests largely upon the following statement of the Commission which the Court quoted in full (R. 48, 116):

> "While, therefore, the payments are not made for any service which the rail lines perform under the lighterage-free rates, there is a remaining question whether such payments may be justified, in any way and to any extent, as compensation properly payable to Seatrain for the savings which it has accomplished for the rail lines by its new method of transfer. The new method of transfer puts the connecting rail lines to less expense under the lighterage-free rates than the old method. It may be argued, therefore, that they would be justified in making any payments that might be necessary for the purpose of inducing the establishment of the new method of transfer, provided they were left with a net saving. There is here no evidence, however, that payments were or are necessary for this purpose. The contract between Seatrain and complainant, to which defendant rail lines are not parties, is not evidence to this effect, in view of the control which Seatrain exercises over complainant. No such payments have, so far as the record shows, been exacted or obtained by Seatrain from an independent rail connection. There is ample reason to conclude, also, that the improved method of transfer is only an incident to the Seatrain plan

> of transportation, and that this plan has sufficient advantages to impel its use and promotion by Seatrain regardless of any contributory payments from rail connections."

In its 17th finding of fact (R. 124) the District Court stated:

> "As a further ground for its decision, the Commission found that the payments might be justified as a part of Hoboken's expense if they were 'necessary for the purpose of inducing the establishment of the new method of transfer.' * * *."

In this the Court was in error. This was not a ground for the Commission's decision. The case before the Commission was fully disposed of by its finding that rail transportation began and ended at Seatrain's car cradle and that the Hoboken's payments to Seatrain were not legitimate operating costs attributable to Hoboken's rail service. The Commission made no such finding as the Court suggests. On the contrary it merely noted a question *whether* such payments might be justified as compensation payable to *Seatrain* for the savings accomplished for the *rail lines* by its new method of transfer. By "rail lines" it is evident that the Commission meant the *trunk lines*, since if loading or unloading was necessary under the lighterage-free rates the Hoboken was reimbursed therefor by the trunk lines and any "savings" accrued only to the trunk lines. But the Commission found it unnecessary to decide this question for two reasons. First, the trunk lines were not parties to the agree-

ment, and in view of Seatrain's control of the Hoboken it could not be construed as a voluntary payment by the trunk lines for the purpose. Secondly, the proceeding did not iinvolve the respective rights and obligations of Seatrain and the trunk lines in the handling of rail-water traffic, such as are involved in Seatrain's pending divisions complaint, I. C. C. No. 28668. The divisions of Seatrain and the trunk lines are directly in issue in that case, and Seatrain has there raised the precise question here indicated by the Commission (R. 647-650) and it can there be determined. Since the Commission's report involved in the instant proceeding was decided July, 1939, and the complaint in Docket No. 28668 was not filed until May, 1941, it will be seen that the issue anticipated by the Commission has become an actuality.

B. The Decision of the District Court Is Based upon Certain Erroneous Assumptions of Fact.

The District Court proceeded upon the assumptions that the Hoboken, under its contract to make payments to Seatrain, had the right "to use the Seatrain devices to fulfill the obligations of carriage," and that the payments were made "for the interconnection which saves Hoboken the labor and costs of loading and unloading freight" (R. 117). More specifically it found that under the contract the "Hoboken makes Seatrain its agent to put the cars upon and take them off the cradle" (R. 116). These assumptions of the Court are directly contrary to the facts shown of record.

1. THE CAR CRANE AT HOBOKEN, N. J., WAS LEASED AND OPERATED BY SEATRAIN, WAS USED EXCLUSIVELY BY IT, AND IS THE EQUIVALENT OF SHIP'S TACKLE.

While the District Court did not directly so state, it appears to have been under the impression that the fact of interchange at the Seatrain cradle connoted some use of the cradle by the Hoboken for the performance of its own rail transportation for which it should properly make some payment. Such an impression is wholly erroneous.

Although the record shows the Hoboken as the owner of the car crane employed in the loading and unloading the ships of Seatrain, the latter having "loaned them money to build it on their ground and to get 6 per cent on their investment" (R. 334), the crane at all times was under lease to Seatrain, was operated and exclusively used by it, and was regarded both by Seatrain and the Hoboken as the equivalent of ship's tackle (R. 230, 332, 386, 508, 511, 258). This appears from the first recital of the agreement of November 21, 1932, between the Hoboken and Seatrain (R. 50), and from the following provision of paragraph 1 of that agreement (R. 51):

> "1. With respect to freight transported by Railroad and consigned to or for delivery to Seatrain when to be delivered, in cars, delivery shall be considered to have been accomplished by Railroad when the cars have been placed upon a cradle of the car elevator on the pier alongside Seatrain's vessel (*the elevator being the equivalent of ship's tackle*)." (Italics inserted.)

To similar effect is the superseding agreement of February 24, 1937 (R. 508, 511, 258), under which the Hoboken granted "to Seatrain the exclusive use of the crane or car elevator * * *."

The Commission's description of the method of loading Seatrain vessels as set forth in *Investigation of Seatrain Lines, Inc.*, 195 I. C. C. 215, 219-220,* to which its report in the instant case made reference (R. 34), makes very clear the fact that the cradles are integral parts of the Seatrain vessels, serving as hatch covers for the several decks. The District Court made the following finding of similar import:

> "There is one cradle for each track on each deck of the vessel and, when the loading of each deck is accomplished, the cradles are left in place flush with the deck, each cradle closing a hatch" (R. 110).

The agreement of February 24, 1937, contains further confirmation of this fact in paragraph 3 thereof (R. 512) under which the Hoboken "leases to Seatrain seven flat cars for use by Seatrain in storing *cradles of Seatrain's vessels* when said vessels are in port, * * *." (Italics inserted.)

Witness Graham M. Brush, President of the Seatrain and the Hoboken (R. 183), testifying with respect to the Seatrain devices, stated:

> "The point of delivery between the Hoboken and Seatrain is the loading cradle which is ship sling for Seatrain" (R. 345).

* * * * * * * *

* The indicated portions of this decision appear *supra*, p. 7.

"* * * I don't want that question to give anyone the impression that the actual structure of the crane itself, the value of the crane itself, have we ever considered to be anything but a part of a normal steamship terminal.

"In other words, the crane and the trestle is leased to Seatrain just the way the railroads lease their terminals with cranes and overhead gear, and so forth and so on, to steamships which dock at their terminals.

"I wanted to distinguish that; although the crane happened to be patented, or, at least, the crane happened to be a part of the patent, the crane itself is not patented. It is merely a part of a steamship terminal" (R. 230).

* * * * * * * *

"* * * We consider the crane as nothing but a crane on a ship for lifting the cargo aboard" (R. 386).

2. THE HOBOKEN DID NOT SECURE, BY ITS PAYMENTS TO SEATRAIN, THE ACTUAL PERFORMANCE OF ANY RAIL TRANSPORTATION SERVICE WHICH IT WAS ITSELF OBLIGATED TO PERFORM UNDER THE RAIL RATES.

Despite the contrary findings of the Commission, and of the District Court itself, the District Court erroneously assumed that the payments under the agreement of February 24, 1937 (R. 53, 259), secured for the Hoboken the actual performance of some rail transportation service which it was obligated to perform under the rail rates. This appears not only from the general language of the opinion of the Dis-

trict Court at Record page 117 but also from its statement that

> "* * * Hoboken makes Seatrain its agent to put the cars upon and take them off the cradle" (R. 116).

The District Court's assumption and conclusion in this respect are wholly in error.

While the terms of the agreement between the Hoboken and Seatrain of February 24, 1937 (R. 53), which was made just subsequent to the filing of the Hoboken's complaint before the Commission for increased divisions (R. 22, 26), contains language which may have misled the Court as to what the parties actually did under the contract, the record is entirely clear that the payments made to Seatrain by the Hoboken thereunder did not secure for it the physical performance of any rail transportation service actually performed and which it was obliged to accomplish under the lighterage-free rates the Commission was asked to divide.

The fact is that on carload freight interchanged with Seatrain at Hoboken, N. J., no loading or unloading of the cars is necessary in order to effect delivery or receipt of the freight at shipside. Nor is there any other rail transportation service the Hoboken is obligated to perform under the rail rates which Seatrain actually performs for it under the agreement pursuant to which the Hoboken's payments are made.

The Commission fully apprehended the precise transportation services and practices of the several

carriers incident to the interchange of carload freight with Seatrain at Hoboken, N. J., and made appropriate findings in this respect. Thus, at Record page 37, the Commission stated:

> "As fully described in *Investigation of Seatrain Lines, Inc., supra,*[*] the cars as well as the freight therein are interchanged between Seatrain vessels and the rail lines, and one of the advantages of the Seatrain service is that the expense of loading and unloading freight to and from the cars, necessary to through transportation in connection with other water carriers, is not necessary to through transportation in connection with Seatrain."

Again at Record page 47, the Commission found:

> "For purposes of its own, Seatrain prefers to receive and deliver the loaded car. *The unloading or loading of the car lading and its delivery or receipt at ship's tackle is therefore unnecessary.* The rail lines do all that is required when they place the cars in or take them from the Seatrain cradle. From this point of view the payments which complainant makes to Seatrain *cover no part of its transportation service under the lighterage-free rates* and are in addition to the full costs of that service." (Italics inserted.)

The District Court itself made the following finding of similar import:

> "By the use of the Seatrain method, goods and merchandise may be transported from shore to

[*] The description indicated appears *supra*, p. 7.

ship and from ship to shore without breaking bulk, and the necessity of loading and unloading the freight is eliminated" (R. 110).

If, in addition to the foregoing findings of the Commission and the Court, any further evidence were needed to show that the 73-cent per ton payment made by the Hoboken to Seatrain on lighterage-free freight does not secure for the Hoboken the actual performance of any rail transportation which it is obligated under the rail rates to accomplish, it would be found in the uncontroverted fact that the service of the Hoboken in interchanging with Seatrain non-lighterage-free freight, as to which it makes no such payment, is precisely identical with its service in interchanging lighterage-free freight as to which the payment is made. This was expressly recognized by the District Court in the following finding (R. 110):

> "With Seatrain freight regardless of how it is billed, whether as lighterage-free freight or non-lighterage-free freight, it is handled by Hoboken in precisely the same physical fashion."

C. The District Court Erred in Finding that the Commission Did Not Determine the *"Quantum Meruit"* of the Hoboken-Seatrain Relationship and Did Not Determine the Existence and Proper Division of the So-Called "Windfall."

1. THE COMMISSION DETERMINED THE *"Quantum Meruit"* OF THE HOBOKEN-SEATRAIN RELATIONSHIP AND FOUND IT OF NO VALUE.

The District Court's criticism of the Commission's decision in this respect reads as follows:

> "Conceding *arguendo* that the contract between Hoboken and Seatrain does not constitute a valid obligation to be considered in determining Hoboken's costs, that does not necessarily mean that there is no obligation upon Hoboken to make some payment for the interconnection which saves Hoboken the labor and costs of loading and unloading freight. The Commission should have determined the *quantum meruit* of the relationship. It is possible that there was no service or relationship of value" (R. 117).

Since the case before the Commission turned upon the question of the allowance to the Hoboken in its divisions of the payments which it made to Seatrain, and since the record was replete with evidence on that matter, the findings of the Commission that the rail transportation began and ended at the Seatrain cradle and that the payments to Seatrain were no part of the costs of the rail transportation, together with its ultimate finding that the Hoboken's divisions were not unjust, unreasonably low, inequitable, or unduly prejudicial to it, and that the corresponding divisions received by the trunk lines were not unjust, unreasonably high, inequitable, or unduly preferential of them, constituted a determination of the *quantum meruit* of the Hoboken-Seatrain relationship.

2. THERE WAS NO WINDFALL IN ANY TRUE SENSE, AND THE COMMISSION SO FOUND.

a. *The rates out of which the Hoboken sought increased divisions comprehended various services of*

receipt and delivery and not shipside receipt and delivery only.

Concerning the rates out of which the Hoboken sought increased divisions, the Commission stated that they were "based on average conditions * * *" (R. 48). This was a matter well understood by the Commission and the parties before it as indicated by the record. Thus, the Hoboken's complaint before the Commission contained in paragraph 4 thereof (R. 23) the allegation that it and the trunk lines were "parties to numerous joint through class and commodity rates * * *." Paragraph 5 of the same complaint made reference to additional "joint through class and commodity rates published or participated in by defendants Southern and Southwestern railroads and Seatrain Lines, Inc., as well as by defendants Eastern Trunk Line railroads, * * *" to which complainant was also a party. The complaint then asserts that the class rates mentioned and many of the commodity rates "were established pursuant to findings or orders of this Commission."

The class rates in Eastern territory had been prescribed by the Commission in *Eastern Class-Rate Investigation*, 164 I. C. C. 314 (1930). In that case (p. 404) the Commission stated that "the rates herein prescribed are based to a very considerable extent upon average conditions; * * *." In that report at pages 425-445, and in a subsequent report in the same proceeding, 171 I. C. C. 481, at pages 489-493, the Commission particularly dealt with the rates to and

from the New York City rate group and discussed the New York Harbor terminal services involved in connection with the prescribed rates. These were well-known matters of which the Commission and the parties took cognizance (R. 291). Complainant's traffic witness testified that "on so-called long-haul freight, the rates to Hoboken are the same as the rates to Manhattan, or to Brooklyn, or any other parts of the New York Harbor district" (R. 291), and the application of the Commission-prescribed class rates to and from the New York rate group for distances more and less than 100 miles was discussed by traffic witnesses for both the respective parties (R. 427-428, 453-456).

Generally speaking the class rates to New York, N. Y., for distances approximately 100 miles and more apply also to numerous grouped destinations in the surrounding district,[5] including deliveries on the New Jersey shore and in New York Harbor within the so-called lighterage-free limits. A generally similar situation obtains in the case of commodity rates to New York, subject to variations as to distances for which the New York rate will have group application, and with appropriate exceptions as to particular commodities. Such were the rates which applied to Hoboken, N. J., and out of which the Hoboken sought increased divisions when charged on freight interchanged with Seatrain. Such rates for convenience might be called New York rates.

These New York rates, or lighterage-free rates, as they have been generally termed upon this record, apply for many and various types of receipt and

delivery. For example, a carload shipment moving under such a rate to a private siding served by the Hoboken would be switched by the Hoboken to the consignee's siding and be unloaded by him at his expense. Another such shipment might be given team-track delivery, and the consignee at his own expense would unload the freight. In neither case would there be any lighterage or unloading service. These may be regarded as examples of minimum terminal service under the rates. On the other hand, these New York rates would also cover the unloading of the freight by the railroads from car to lighter on the New Jersey side of the Hudson River, and lighterage service to shipside or ship's pier on the Manhattan shore or elsewhere about New York Harbor within the lighterage limits. Because this maximum service is available thereunder, these rates are frequently called lighterage-free rates. Such rates also provided for the unloading and handling of the freight from cars on the New Jersey shore to shipside, of which the operation involved in the Hoboken's delivery of lighterage-free freight to vessels of the Pan-Atlantic Steamship Company is an example. On the other hand, delivery of freight moving under such rates in open-top cars where the same can be placed alongside ship within reach of ship's tackle, is accomplished in that manner without further railroad service (R. 34, 47, 110, 114, 158, 418, 419).

The District Court appears to have been under the erroneous impression that the rates to be divided included therein the sum of 75 cents per ton to com-

pensate the rail carriers for the cost of loading and unloading freight cars, and that when such services are not actually performed there is a "saving" to them of that amount. Such rates to New York, under which lighterage service is available if required, are the same regardless of the particular type of delivery employed. On some shipments a maximum terminal service is necessary, and on others a lesser terminal service. This is the meaning of the Commission's statement that

> "Those rates, however, are based on average conditions, and a similar unearned benefit would accrue if a steamship company now docking on the Manhattan waterfront and served by lighter should shift to a dock with direct rail connections on the Jersey shore. It would hardly be suggested that in such an event the defendant rail lines should compensate the steamship company for the change" (R. 48).

b. *Under the lighterage-free rates there is no obligation on the trunk lines to load or unload carload freight except as may be necessary to effect receipt or delivery.*

As above noted, the character and extent of the physical service performed by the railroads at New York Harbor in the receipt, delivery, and interchange of lighterage-free freight are not uniform, but vary greatly dependent upon numerous facts and circumstances. At some of the railroad waterfront terminals in New York Harbor, and particularly on the New Jersey side, open-top railroad cars are placed

alongside vessels, and the freight is handled directly between car and vessel by ship's tackle. Where this sort of operation takes place, the railroads do not perform any lighterage service and do not load or unload, or pay for loading or unloading, the cars (R. 418-419). When open-top cars are thus placed alongside the vessel in satisfaction of the railroad's obligation to make the freight available for handling by the connecting water carriers, the freight is within reach of the ship's tackle and the loading or unloading of the vessel is performed by or at the expense of the steamship. No loading or unloading costs are paid or borne by the railroads on the above-mentioned traffic even though it moves to or from the port under lighterage-free rates, and no lighterage service is performed because none is necessary (R. 418-419).

As indicated by these practices there is no positive or fixed undertaking or obligation on the Hoboken, or on the trunk lines, by tariff or otherwise, to load or unload or to lighter all carload freight subject to lighterage-free rates. The only obligation of the rail carriers, in effecting an interchange of lighterage-free freight with a water carrier in New York Harbor, whether a break bulk steamship or Seatrain vessel, is to deliver or receive the freight within reach of ship's tackle or alongside the ship so that the water or rail transportation may be completed by the connecting line (R. 46, 47). In the discharge of this obligation, the rail carriers perform such lightering and loading and unloading of lighterage free freight as is

necessary in order to accomplish the interchange with the connecting water carrier. In the interchange with Seatrain, this obligation is completely satisfied and extinguished when cars of freight are placed at or removed from alongside the Seatrain vessel at the car cradle. The placement at the car cradle is at the location desired by Seatrain in the utilization of its car crane and other ship-loading and unloading devices and appurtenances.

If, contrary to the fact, there were a tariff obligation on the part of the railroads under lighterage-free rates to load or unload all carload freight in any event, it would be necessary in compliance with such duty actually to load or unload the cars interchanged with Seatrain. But the cars are not in fact so loaded or unloaded at the point of interchange, and Seatrain does not desire it. Such loading or unloading would nullify the benefits to Seatrain resulting from its unique method of operation and from the use of freight cars as packages or containers. As found by the Commission. "For purposes of its own, Seatrain prefers to receive and deliver the loaded car" (R. 47).

c. The Commission's finding, that the lack of necessity of loading or unloading cars of freight interchanged with Seatrain did not represent a windfall or saving to the rail lines in any true sense, is adequate.

It is to be remembered that virtually the whole controversy before the Commission turned on the question as to whether the Hoboken's payments to

Seatrain on lighterage-free freight could be included in its legitimate costs of performing its rail service under the rates to be divided. The evidence before the Commission made it wholly clear that if it dismissed the complaint of the Hoboken (filed in December, 1936) which was based upon the payments to Seatrain provided for in the agreement of February 24, 1937, the net position of the Hoboken would not be affected, but the trunk lines would have the benefit of not having to provide their maximum terminal delivery service in effectuating the interchange of carload freight with Seatrain. It was likewise clear upon the record that if the Commission were to sustain the complaint of the Hoboken, the agreement between it and Seatrain would operate to require the trunk lines to pay to *Seatrain* the amount by which their expenses of operation were not increased, due to the lack of necessity of having to load or unload freight to effectuate the interchange. In this situation the Commission found as follows:

> "It is true, as complainant points out, that if the payments which it now makes to Seatrain are not borne by defendant rail lines through a decrease in their divisions and a corresponding increase of complainant's divisions, they will receive an unearned benefit. This comes about from the fact that this new method makes it unnecessary for the rail lines to perform all the service the lighterage-free rates. Those rates, however, which they hold themselves out to perform under are based on average conditions, and a similar unearned benefit would accrue if a steamship

> company now docking on the Manhattan waterfront and served by lighter should shift to a dock with direct rail connection on the Jersey shore. It would hardly be suggested that in such an event the defendant rail lines should compensate the steamship company for the change" (R. 48).

This finding, while not formally numbered or denominated as such,* read in the light of the issue before the Commission, is wholly clear and adequate. It says plainly that the benefit which accrues to the trunk lines, when carload freight moving under lighterage-free rates is interchanged with Seatrain, by reason of the lack of necessity for unloading the freight from the cars, is not properly to be regarded as a "windfall" or "saving" to them. The illustration which the Commission employs makes this doubly clear. Thus, using the Commission's example, if the theory of the Hoboken's complaint were sound and were given general application, a steamship company now docking on the Manhattan waterfront and served by lighter could shift to a dock with direct rail connections on the New Jersey shore and demand that the rail carrier pay it the amount which the railroad

* In most cases the Commission's reports covering the facts of record serve as its findings without the making of separate formal findings of fact. "Reasons which underlie the expert opinion which the Commission expresses * * * need not be marshalled and labelled as findings in order to make intelligible the Commission's conclusion or ultimate finding or to make possible the performance on the part of the courts of the functions delegated to them. Here as in other situations (*Colorado* v. *United States*, 271 U. S. 153, 166-169; *United States* v. *Louisiana*, 290 U. S. 70, 76-77; *Florida* v. *United States*, 292 U. S. 1, 8-9) it is the conclusion or ultimate finding of the Commission together with its reasons and supporting data which are essential. Congress has required no more." *Group of Inst Investors* v. *C., M., St. P. & P. R. Co.*, 317 U. S. , 63 S. Ct. 727

was "saved" by reason of the fact that lighterage service had become unnecessary.

d. *If the Commission had included in the Hoboken's transportation costs the payments made to Seatrain, the effect would have been to impose upon the trunk lines the expense of loading and unloading Seatrain's vessels.*

As previously noted* the Seatrain car cradle and crane are the exact functional equivalents of the ordinary cargo-type steamship's cargo mast, tackle, and sling. When the Hoboken places or receives a car at the Seatrain cradle, which the Commission found was the point of interchange where rail transportation ended, it has performed its full railroad obligation to place or receive the freight alongside vessel. Railroads at New York Harbor do not pay or bear any of the costs incurred in loading or unloading steamships, or in stowing freight within the ship. They merely place the freight within reach of the ship's tackle or receive it after the ship's tackle has removed it from the hold of the vessel. The loading or unloading of Seatrain vessels by means of the car cradle and elevator, and the selective placement of cars in the vessel, are not different in principle than the work of loading, unloading, and stowing performed by break-bulk steamships at their own expense. The car cradle and crane used by Seatrain are no more than ship's tackle and sling, in fact are precisely that, and the railroad cars are freight containers or packages.

* *V. supra*, p. 44.

For these reasons if the Commission were to require the trunk lines to pay the Hoboken in accordance with its demands, in order that it might make the agreed payments to Seatrain, the effect would be to require the trunk lines to bear the expense of loading or unloading Seatrain's vessels. Such expense ought to be borne by Seatrain and not by the trunk lines.

3. IF, CONTRARY TO THE FACT, THERE WERE A "WINDFALL" RESULTING FROM THE ABSENCE OF LOADING OR UNLOADING WHEN LIGHTERAGE-FREE FREIGHT IS INTERCHANGED WITH SEATRAIN, IT WOULD BE A MATTER FOR CONSIDERATION IN DETERMINING DIVISIONS OF JOINT RAIL-WATER RATES TO WHICH BOTH SEATRAIN AND THE TRUNK LINES WERE PARTIES. SUCH A COMPLAINT BY SEATRAIN IS PENDING.

The District Court erred in concluding that if a windfall actually exists it should be apportioned between the Hoboken and the trunk lines. If the Hoboken were to be paid all or some proportionate part of the lesser cost to the trunk lines by reason of the lack of necessity for loading or unloading cars of lighterage-free freight interchanged with Seatrain, the amount received by it in the first instance would merely flow from the Hoboken as an intermediary to Seatrain as the ultimate beneficiary and real party in interest, although Seatrain is not a party to the Hoboken's divisions case, and Seatrain's rates and divisions are not in issue in the instant proceeding. If, contrary to the fact, there were a windfall by reason of Seatrain's use of its ship-loading devices,

an appropriate occasion for the Commission to determine its existence and how it should be apportioned would be in such a proceeding as the pending complaint of Seatrain, I. C. C. No. 28668, where it asks the Commission to prescribe divisions, as among itself and the eastern and southwestern railroads, of the joint rail-Seatrain-rail rates prescribed in Docket No. 25727, *Seatrain Lines Inc.* v. *Akron, C. & Y. Ry. Co.*, 226 I. C. C. 7; 243 I. C. C. 199.

The soundness of this conclusion is attested by the fact that Seatrain's divisions complaint (R. 643) in paragraphs 9 to 13 thereof (R. 647-650) particularly counts upon its ship-loading devices as a reason justifying the divisions it there seeks.

Upon the record it must be clear that the real party interested in pressing the instant complaint is Seatrain and not the Hoboken. The question may therefore arise why Seatrain should elect to seek payments from the trunk lines through the Hoboken as an intermediary rather than directly in its own divisions complaint against the railroads. The answer to this question is made clear by the letter which counsel for the Hoboken addressed to Judge Fake under date of January 10, 1943, in response to the Judge's letter to counsel of December 23, 1941, inquiring as to the status of the latter complaint. This response on the part of the Hoboken states plainly that Seatrain's divisions complaint can operate only in respect of the joint rail-water-rail rates prescribed by the Commission between interior eastern points on the one hand and points in the South and Southwest on the other.

and can have no application to the larger portion of the Seatrain traffic which is to and from Cuba. But this is a direct admission by the Hoboken that any consideration to be given by the Commission to economies resulting from interchanging carload traffic with Seatrain should be reserved, so far as joint rail-water-rail rates are concerned, to a proceeding in which a division of those rates as between Seatrain and the railroads is in issue.

The fact that there are no joint rail-water rates in effect to Cuba in connection with Seatrain plainly enough indicates the reason for Seatrain's effort in the instant case to force the trunk lines to contribute to it through the Hoboken. But this circumstance cannot alter the fact that the instant proceeding, to which Seatrain is not a party, cannot properly be made a vehicle for compelling the trunk lines to pay to it amounts predicated upon their alleged "saving" of expense when carload freight is interchanged with Seatrain vessels as compared with the expense of interchanging freight with vessels of the ordinary cargo type.

4. IF THERE WERE A "WINDFALL" FOR DIVISION BETWEEN THE RAIL LINES IN THIS CASE, THE COMMISSION HAS DIVIDED IT.

The central matter for consideration in the case before the Commission was whether the Hoboken in its divisions of the lighterage-free rail rates as applied on traffic interchanged with Seatrain, was entitled to something more than its regular switching service

divisions by reason of the lesser terminal expense incurred by the rail lines on such traffic. The record fully dealt with this question and the Commission's report discloses that it gave extensive consideration to it. The report also states fully the Commission's reasons for its ultimate conclusions in this regard. These reasons were summed up by the Commission as follows:

> "Summarizing this discussion, we agree that complainant is entitled to divisions out of the joint rates in question which are based upon the full costs of performing its portions of the through transportation service, including a fair return, but subject to the qualifications above indicated. We do not agree, however, that the payments which complainant makes under its contract with Seatrain can properly be regarded, upon the evidence presented, as a necessary part of the costs of this service; and, if these payments are not included, the conclusion is warranted by the record that complainant is adequately compensated by its existing divisions. While the result has been to increase the divisions received by defendant rail lines under the lighterage-free rates without change in the service which they perform, this is because some of the service heretofore performed under the lighterage-free rates has become unnecessary." (R. 48-49).

If therefore, there were in fact a "windfall" for division as between the Hoboken and the other eastern rail carriers, then it must be concluded that the Commission made such division when it found that—

> "* * * complainant's divisions here in issue are not unjust, unreasonably low, inequitable, or unduly prejudicial to complainant and that the corresponding divisions received by the defendant rail lines are not unjust, unreasonably high, inequitable, or unduly preferential of them" (R. 49).

IV. THE DISTRICT COURT ERRED IN HOLDING THAT THE COMMISSION FAILED IN ITS STATUTORY DUTY TO PRESCRIBE JUST, EQUITABLE, AND NON-PREJUDICIAL DIVISIONS.*

The District Court's condemnation of the Commission's decision for failure to comply with the statute† is as follows:

> "The act directs the Commission to inquire into the facts and to prescribe just and equitable divisions and not unjustly to prefer or prejudice any party. There was no evidence presented to show that the granting of the entire saving of the loading or unloading of the cars was not an undue emolument for the trunk line railroads. The Commission's remark that the defendant's rates were based on average costs scarcely constitutes a finding as prescribed by the Act. The Commission merely stated in conclusion that such divisions are not unduly preferential" (R. 118).

While thus stated as a separate ground for setting aside the Commission's order, the Court's criticism

* This point is supported by Assignments of Error Nos. 1, 2, 3, 6, 7, 8, 9, 11, 16, 17, 18, and 19 (R. 129-132).

† Section 15(6) of the Interstate Commerce Act, U. S. Code, Title 28, Sec. 15(6).

in this respect, to be properly understood, must be read in connection with its preceding statements (R. 117) that "the issue at bar is not predicated solely upon Hoboken's legitimate costs" and that "The entire inquiry should be directed to securing 'a fair and equitable division' of the rates." Because of its impression that the railroads secured a "windfall" or a "saving" when lighterage-free freight was interchanged with Seatrain—an impression which is shown above* to be based upon a misapprehension of the character of the rates and of the railroads' operations and obligations thereunder—the Court here concluded that it was not a sufficient compliance with the statute for the Commission to prescribe for the Hoboken a division based upon its legitimate costs plus fair return, but that the statute required "a fair and equitable division" of the supposed "windfall" or "emolument."

Since the erroneous nature of the Court's assumptions concerning the "windfall" or "emolument" has already been demonstrated, it will be sufficient here to note that the Commission's approval of divisions for the Hoboken in a fixed or flat amount, rather than on the basis of percentage proportions, responded precisely to the theory upon which the Hoboken presented its evidence, and that the Commission's determination was predicated upon adequate findings amply supported by the evidence.

* *V. supra*, p. 50.

A. The Hoboken Presented Its Case on the Theory, Which the Commission Accepted, That it Should Receive As a Division a Uniform Amount Per Ton Without Particular Regard to the Balances Remaining to the Trunk Lines.

The case before the Commission involved the division, as between the Hoboken and the trunk lines, of a multitude of rail rates on numberless commodities, of varying amounts, and for different distances between Hoboken, N. J., and interior eastern points. Thus, the Seatrain-Trunk Line carload traffic amounted to 6,517 cars in 1936, and to 6,611 cars in 1937 (R. 606). If these various rates were divided in accordance with proportionate service, the static amount of the Hoboken's service, coupled with a variable service by the trunk lines, would have necessitated the fixation of innumerable different percentage divisions. In this situation the Hoboken expressly asked the Commission to accord it a division of fixed amount per ton based upon the cost of performing its rail service plus a fair return without regard to the amount of the individual rates or the portions thereof which would remain to the trunk lines. To this the Commission agreed (R. 46, 47).

A similar conclusion as to the appropriateness of fixing a reasonable switching charge as the division for a short line railroad was reached in *Atlantic Coast Line R. Co.* v. *Cape Fear Rys., Inc.*, 197 I. C. C. 397, 408, where the Commission concluded:

> "The record is persuasive that the services rendered by defendant in connection with the

traffic under consideration are in their nature mere switching movements, the performance of which is not attended with any unusual or particular difficulty. Accordingly a fair switching charge is all that defendant is entitled to as its portion of the joint through rates."

The Cape Fear sought to set aside the Commission's order, urging in effect that its share should have been fixed in proportion to the respective services of itself and the Atlantic Coast Line. The specially-constituted District Court in *Cape Fear Rys.* v. *United States*, 7 F. Supp. 429, at pages 431 and 432, stated:

"The question before the Commission was, not the cost to the Coast Line of its share of the transportation, but what was a proper and reasonable share of the revenue for the Cape Fear to receive. * * *"

* * * * * * *

"We think, therefore, that there is no reason to believe that $5.85 is not a just and reasonable share of the rate. That is especially true where, as here, the service rendered by the complaining road is substantially identical in all shipments so far as the distance of haul and handling is concerned, and where in the great majority of instances the consignee of shipments destined to and consignor of those from the reservation is the same person, namely, the government, and where, as in the instant case, the complaining road maintains no passenger, express, or mail service but only switching service not based on any regular schedule. Under the circumstances, we think it is apparent that a per car basis of division is the

fairest and most equitable that could have been applied."

The District Court's decision was affirmed in a *Per Curiam* opinion at 294 U. S. 693.

B. The Commission's Finding That the Hoboken's Existing Divisions on Lighterage-Free Traffic Interchanged with Seatrain Were Just, Reasonable, and Equitable Were Predicated Upon Sufficient Findings Which Were Amply Supported By the Evidence.

Not only did the Commission determine that the divisions which the trunk lines were currently according the Hoboken on lighterage-free traffic interchanged with Seatrain were sufficient to meet all its legitimate costs of performing its rail transportation service and provide a fair return, but it also found that such division complied with the statute in respect of their equitable and non-prejudicial character as well. More specifically the Commission found:

> "We find, therefore, that complainant's divisions here in issue are not unjust, unreasonably low, inequitable, or unduly prejudicial to complainant and that the corresponding divisions received by the defendant rail lines are not unjust, unreasonably high, inequitable, or unduly preferential of them" (R. 49).

1. THE COMMISSION'S ULTIMATE FINDING THAT THE HOBOKEN'S EXISTING DIVISIONS WERE EQUITABLE AND NON-PREJUDICIAL WAS SUPPORTED BY SUBORDINATE FINDINGS OF FACT.

The ultimate finding of the Commission, last above quoted, to the effect that the Hoboken's divisions were

not unjust, inequitable, or unduly prejudicial to it were amply supported by subordinate findings of fact which bore upon the equitable nature of the existing divisions. As to the Hoboken, the Commission found:

> "The record warrants the conclusion that the former division of 60 cents and the present divisions of 63 and 66 cents are sufficient to cover the cost of the service performed by complainant and also a reasonable return on the property owned or used by it in performing such service."

With respect to the rates of return earned by the principal ten New York Harbor railroads which were named as defendants in the Hoboken complaint, the Commission stated:

> "As contrasted with complainant's income accounts for 1936 and 1937 as adjusted by it and as further adjusted, the net railway operating income for 10 New York Harbor railroads[4] show a rate of return on investment in railway property used in transportation ranging from nothing to 3.23 per cent in 1936 and from nothing to 2.72 per cent in 1937, and for the 10 roads as a whole 2.67 per cent in 1936 and 2.21 per cent in 1937. Four of the ten roads, namely, the Erie, the New Jersey & New York, the New York, Ontario & Western, and the New York, Susquehanna & Western, are in bankruptcy" (R. 44).

The Commission further considered comparisons of complainant's divisions with those accorded the so-

[4] "Baltimore & Ohio; Central Railroad of New Jersey; Delaware, Lackawanna & Western; Erie; Lehigh Valley; New Jersey & New York; New York Central; New York, Ontario & Western; New York, Susquehanna & Western, and Pennsylvania."

called contract terminals in Brooklyn, N. Y., as possibly bearing upon the equitable character of the Hoboken's divisions, and found as follows:

> "Complainant contends that defendant's earnings will not be inequitable or unduly low if they pay complainant a division of $1.35 on lighterage-free freight and shows that on such freight to and from other steamship lines defendants pay complainant a division of $1.35; that on traffic to and from so-called contract terminals in Brooklyn, N. Y., defendants pay from 5.3 to 8 cents per 100 pounds; and that the costs of some of the lighterage movements in New York Harbor, including movement to and from piers served by complainant, were greater than $1.35 per ton in 1933 and 1934. None of the services for which these payments are made or costs incurred is comparable to the service performed by complainant on the traffic here considered" (R. 44, 45).

Further, on the subject of the equitable nature of the existing divisions, the Commission made the following finding based upon a study introduced by the Hoboken itself:

> "Complainant also shows that during the months of March and September it interchanged with defendants 1,102 carloads of Seatrain traffic and that the average loading of these cars was 30.9 tons, the average rail haul 258 miles, and the average revenue $120.86 per car. Complainant's revenue on such traffic at 60 cents per ton

was $18.54 per car and 15 per cent of the total revenue. On the basis of a division of $1.35 it would have been $40.72 per car, leaving slightly less than two-thirds of the total revenue to defendants for their 258 mile haul and terminal service at origin" (R. 45).

By contrast, the distance over the rails of the Hoboken from the Erie interchange to the Seatrain cradle, as scaled from map Exhibit 29 (R. 528, 364), is about 2500 feet.

An exhibit from the trunk lines' traffic study shows 94 cars handled under lighterage-free rates as to which the Hoboken's revenue would have been $48.47 per car at the claimed division of $1.35 per ton (R. 581, 456-457).

a. *The District Court erred in considering a theoretical rate which was not typical of the rates to be divided.*

The finding of the Commission last above quoted is of particular significance in that it shows how greatly in error was the District Court in its conception of the underlying facts of the case and particularly of the measure or amount of the rates which were to be divided. Thus, at Record page 111, the Court states that the Commission has established a through rate of $7.00 per ton to shipside out of which the trunk lines receive $5.65 on break-bulk lighterage-free freight and the Hoboken, $1.35, 60 cents of which goes to the latter as compensation for

switching charges and 75 cents as reimbursement for the cost of loading, unloading, and transferring freight between the freight cars and shipside. The statement of the Court in this connection indicates that it may have been under the erroneous impression that the only rate to be divided was in the amount of $7.00 per ton. The traffic interchanged between Hoboken and Seatrain covers a wide variety of articles and commodities transported to and from many different origin and destination points in Eastern territory. There are literally thousands of different rates involved in the divisional dispute (R. 571-594, 456-457). Exhibit 24 (R. 523, 275), introduced by the Hoboken, from which the Commission took the figures appearing in the foregoing finding shows that the average rate was $3.91 a ton. The use of $7.00 per ton as illustrative or typical of the rates to be divided is misleading and distorts the allocation of revenue between the contesting parties.

Considering its extremely short switching haul, the Commission's finding that the Hoboken under its 60-cent division receives 15 percent of the total revenue out of an average rail haul of 258 miles, and that under the divisions sought the Hoboken would receive more than one-third of the total revenue, not only shows the error of fact into which the District Court fell, but constitutes definite support for the Commission's ultimate administrative conclusion that the existing divisions were not unjust, inequitable, or unduly prejudicial to the Hoboken.

2. THE RECORD AMPLY SUPPORTED THE COMMISSION'S FINDINGS.

The findings of the Commission which underlie and support its ultimate conclusions with respect to the equitable and non-prejudicial character of the Hoboken's present divisions, which are quoted above* are fully supported by the Record. This fact has at no time been challenged. But more than this, the record contains a wealth of evidence upon which the Commission properly reached its ultimate conclusion in this respect. A few examples will now be noted.

a. *The evidence before the Commission showed that the divisions sought by the Hoboken would leave the trunk lines insufficient funds for the transportation service performed by them.*

The Hoboken's traffic study, as noted above,† covered 1102 cars of trunk-line freight interchanged in March and September, 1937, which yielded average rail revenue of $120.86 for an average haul of 258 miles. Had the Hoboken secured a division of $1.35 per ton on this traffic it would have obtained 34.5 percent of the revenue, for a switching service of less than a mile.

On 39 cars of lighterage-free freight interchanged with Seatrain the total eastern rail revenue was $2,367.39, of which the Hoboken, under its claimed division of $1.35 per ton, would have received

* *V. supra*, p. 68.
† *V. supra*, p. 70.

$1,413.87, or 59.7 percent of the whole (R. 580, 593, 457). On 25 cars of wire and wire articles from Allentown, Pa., to Hoboken, N. J., and Havana, Cuba, the total eastern rail revenue amounted to $1,341.36, of which the Hoboken's share under the divisions demanded would have been $952.09, or 71 percent of the total rail charges to Hoboken, N. J. (R. 593).

C. The District Court Erroneously Substituted Its Judgment for that of the Commission In An Administrative Matter In that It Concluded that the Divisions of the Hoboken Were Inequitable and Prejudicial to It.

The decision of the District Court, after directing the Commission to make a redetermination of certain matters, concluded as follows:

> "It should likewise determine a division of the through rate which would not be unduly prejudicial or preferential to any of the parties" (R. 119).

In terms the District Court disavowed any authority on its part to substitute its judgment for that of the Commission in an administrative matter but in actuality, and apparently because of its misapprehension as to the nature of the rates involved, the carrier services, practices, and obligation thereunder, it definitely substituted its judgment for that of the Commission. True, it did not attempt to determine what would be reasonable, equitable, and non-prejudicial divisions as between the parties to the pro-

ceeding. But it was no less a substitution of its judgment for that of the Commission for it to find, as it plainly did, that the divisions fixed by the Commission were not the just, equitable, and non-prejudicial divisions required by the statute because of the Commission's refusal to include in the Hoboken's divisions something in respect to its payments to Seatrain.

V. THE DISTRICT COURT ERRED IN DIRECTING THE COMMISSION TO FIND WHETHER "THE SEATRAIN DEVICES ARE AN EFFICIENT AID TO RAILROAD TRANSPORTATION," TO "EVALUATE THE WORTH OF THE DEVICES TO HOBOKEN AND A LEGITIMATE PAYMENT THEREFOR," TO INCLUDE "IN THE BASE UPON WHICH HOBOKEN'S FAIR RETURN IS CALCULATED, THE TRUE VALUE OF THE SEATRAIN DEVICES," AND TO "SET THE VALUE OF THE CONTRACT AND THE SEATRAIN DEVICES TO THE HOBOKEN."*

The decision of the District Court in this respect reads as follows:

> "If the Commission should find that the Seatrain devices are an efficient aid to railroad transportation, the Commission should evaluate the worth of the devices to Hoboken and a legitimate payment therefor; in short, including in

* This point is supported by Assignments of Error Nos. 2, 4, 5, 7, 9, 12, 13, 15, 17, and 18 (R. 129-132).

the base upon which Hoboken's fair return is calculated, the true value of the Seatrain devices. In effect, the Commission, as a representative of the public interest and the public would set the value of the contract and the Seatrain devices to Hoboken (R. 118-119).

A. The Seatrain Devices and the Contract Between the Hoboken and Seatrain are of No Value to the Hoboken in the Performance of Rail Transportation Service Under Lighterage-Free Rates, and the Commission So Found.

The Court erred in directing the Commission to find whether the Seatrain devices are an efficient aid to railroad transportation. The Seatrain devices are covered by a patent which is personal to Seatrain and are used exclusively in connection with the performance of water transportation (R. 39, 227, 332). When the vessels are in operation between ports the cradles serve as hatch covers and portions of the decks. When the ships are in port one of the cradles is used as a ship's sling, and the others are stored on flat cars which Seatrain leases from the Hoboken for the purpose (R. 230, 345, 508, 511, 512, 258). The crane, which is owned by the Hoboken but is leased to Seatrain for the latter's exclusive use, is a fixed facility on the pier, but in elevating railroad cars it performs precisely the same functions as the cargo mast and tackle on the ordinary type of cargo ship (R. 230, 332, 386, 508, 511, 258). The Seatrain devices relate to water transportation, and have as their principal objective the facilitation of the loading and un-

loading of the vessels, thus saving time in port, and the better preservation of the freight by eliminating its handling to and from railroad cars at the steamship terminal (R. 330-332, 372, 386).

The Seatrain car cradle, crane, and other devices, have no value to the Hoboken because they are not essential to or used by the Hoboken in the performance of rail transportation service connected with the placement or the receipt of freight at the Seatrain car cradle alongside the vessel. The loading, unloading, and placement of the car within the Seatrain vessel, which are accomplished by the crane, cradle and other appurtenances, are performed for and on behalf of the steamship company and occur beyond the point at which the Commission found that rail transportation begins or ends. So far as the Hoboken is concerned, it is immaterial to it whether freight subject to lighterage-free rates is actually loaded or unloaded as an incident to the placement or receipt alongside the vessel, because the Hoboken always received the basic division of 60 cents per ton and obtains reimbursement of actual out-of-pocket expenses incurred for loading and unloading the cars when that is actually done, but not otherwise.

The Commission's findings that rail transportation commences or ends at the Seatrain car cradle and that expenses relating to property or services beyond that point should not be included in the Hoboken's legitimate operating expenses, are a determination by it that the Seatrain devices and the agreement with

Seatrain are without value to the Hoboken in the performance of rail transportation under the rates involved.

B. The Commission Could Not Properly Include the Value of Seatrain's Devices in the Base Upon Which the Hoboken's Fair Return is Calculated.

As shown above* the crane is that of Seatrain, being held by it under lease, and is used exclusively by it for terminal service incident to its water transportation. Conversely it is not at all used by the Hoboken nor by Seatrain as agent for the Hoboken in the performance of any rail transportation service. Under these circumstances it would have been entirely improper for the Commission to "evaluate the worth of the devices to Hoboken" or to include the value of such devices "in the base upon which Hoboken's fair return is calculated." See in this connection the provisions of Section 19a (b) First, of the valuation section of the Interstate Commerce Act. U. S. Code, Title 49, Sec. 19a.

C. Any Evaluation of Seatrain's Devices for the Purpose of Determining Divisions Would Have to be in Some Proceeding, such as Seatrain's Pending Divisions Complaint, Where Seatrain and the Trunk Lines Were Parties. This is Not Such a Case.

As previously shown† Seatrain has filed with the Commission under its Docket No. 28668 a complaint

* *V. supra*, p. 44.
† *V. supra*, pp. 11, 43.

which asks the Commission to prescribe the respective divisions for itself, the eastern trunk lines, and the southwestern railroads of the rail-water-rail rates prescribed by the Commission in Docket No. 25727, *Seatrain Lines, Inc.* v. *Akron C. & Y. Ry. Co.*, 226 I. C. C. 7, 243 I. C. C. 199. This complaint in paragraphs 9 to 13 (R. 647-650) particularly counts upon the value of its ship-loading devices as one of the grounds for the prescription of the divisions which it seeks. In such a case quite obviously the Commission would have to give consideration to such devices and their value to Seatrain as they might bear upon the divisions to be prescribed. In that proceeding Seatrain as well as the eastern railroads, including the Hoboken, and the southwestern railroads are parties. But Seatrain is not a party to the instant case and its divisions are not involved.

VI. CONCLUSION.

The findings of fact by the Court below are in substantial agreement with those of the Commission. The Court, however, disagreed with the Commission's conclusions and held that additional findings should have been made as to certain specified matters, when, in fact, the Commission made findings dealing adequately therewith. As appears from the facts set forth in earlier portions of this brief, the Commission acted on substantial evidence within the scope of its authority in accordance with the statutory provisions.

and the Court erred in usurping the administrative functions of the Commission and substituting its judgment for that of the Commission.

For the reasons indicated it is respectfully submitted that the decree of the District Court is in error and should be reversed.

Respectfully submitted

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SEPTEMBER 29, 1943.

APPENDIX.

Section 15(6) of the Interstate Commerce Act—

U. S. Code, Title 49, Sec. 15(6)—provides:

"Whenever, after full hearing upon complaint or upon its own initiative, the commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation) would have been the just, reasonable and equitable divisions thereof, to be received by the several carriers, and require adjustment to be made in accordance therewith. In so prescribing and determining the divisions of joint rates, fares, and charges, the commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and

used in the service of transportation, and the importance to the public of the transportation services of such carriers; and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare, or charge."

Section 1(4) of the Interstate Commerce Act—U. S. Code, Title 49, Sec. 1(4)—provides:

"It shall be the duty of every common carrier subject to this chapter to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto; and it shall be the duty of common carriers by railroad subject to this chapter to establish reasonable through routes with common carriers by water subject to chapter 12 of this title, and just and reasonable rates, fares, charges, and classifications applicable thereto. It shall be the duty of every such common carrier establishing through routes to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operation, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such participating carriers."

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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 43.

INTERSTATE COMMERCE COMMISSION, THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.,
Appellants,

v.

HOBOKEN MANUFACTURERS RAILROAD COMPANY,
Appellee.

REPLY BRIEF FOR RAILROAD APPELLANTS, THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.

WILLIS T. PIERSON,
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NOVEMBER 8, 1943.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943. No. 43.

Interstate Commerce Commission, The Baltimore and Ohio Railroad Company, et al.,
Appellants,

v.

Hoboken Manufacturers Railroad Company,
Appellee.

REPLY BRIEF FOR RAILROAD APPELLANTS, THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.

Foreword.

Before proceeding to make specific replies to the several points urged in the brief for appellee, Hoboken Manufacturers Railroad Company, certain general features of the brief may be noted.

To a considerable extent the brief is concerned with matters which were appropriate for Commission consideration and which it actually took into

account, but which are beyond the province of the Court to weigh upon review, since they are the subject of administrative findings by the Commission supported by substantial evidence.

Analysis of the brief for appellee compels the conclusion that the underlying contest, although it was not before the Commission and is not before the Court in this proceeding, is one between Seatrain and the trunk lines as to whether the latter shall be required to contribute to it because they incur no expense for loading or unloading cars of lighterage-free freight when Seatrain uses its devices for loading or unloading railroad freight cars to and from its ships. Of course, such a question cannot be determined in this litigation, since Seatrain is not a party, and the issues do not admit of it.

Appellee's brief also brings into bold relief the fact that the Hoboken itself has nothing to gain by this litigation, but has been used by Seatrain in an attempt to extract payments from the trunk lines under a contract to which they were not a party and as to the terms of which they were not consulted.

The only issue before the Commission was as to the lawfulness of the Hoboken's divisions of the rail rates for the services it performs thereunder, and the only question before the Court is whether the Commission in determining that the existing divisions were reasonable and otherwise lawful acted beyond the scope of its powers or in an arbitrary and unlawful manner.

Reply to Appellee's Basic Proposition.

Appellee's basic proposition has for its major premise the assertion that the trunk-lines have an absolute obligation to unload or load freight moving under rates that include delivery or receipt at ship-side, and that such rates include definite compensation for such unloading or loading of cars. Its minor premise is that the agreement of February 24, 1937, (R. 53) between Seatrain and the Hoboken secures to the latter, and through it to the trunk lines, a "saving" of the expense for loading or unloading freight at the port by reason of Seatrain's undertaking to use its devices for loading and unloading cars onto and from its ships without disturbance of the car lading. The conclusion appellee would draw from these premises is that through an increase in its divisions of the rail-shipside rates it should be put in a position to pay to Seatrain the equivalent or some portion of the value to the trunk lines of the "saving" of the expense of unloading or loading freight when cars are taken upon or discharged from Seatrain's vessels.

The major premise is erroneous in that there is no absolute obligation on the railroads to unload or load all carload freight moving on rail-shipside rates, and in that such rates do not include the sum of 75 cents per ton or any other specific amount to compensate the railroads for unloading or loading such freight.

If there were such an absolute obligation, the service of unloading or loading would have to be actually performed, which is not desired by Seatrain and which would defeat the objective of its method of operation. The record is clear that the only duty of the railroads under shipside rates is to place or receive the freight at the foot of ship's tackle or alongside the vessel. The loading and unloading of freight cars is performed only when such service is necessary in order so to place or receive the freight. Not all carload freight moving under shipside rates is loaded or unloaded at the expense of the railroads. The same New York group rates which apply to and from shipside at Hoboken, N. J., also apply on freight handled at team tracks and private sidings at Hoboken, N. J., and elsewhere in the New York harbor district, where the loading and unloading expense is borne by the shipper or consignee. Moreover, freight moving on shipside rates in open-top equipment, delivered to or received from break-bulk water carriers on marginal tracks on the piers, is unloaded or loaded at the expense of the steamship lines and not at the expense of the railroads (R. 418).

The rail rates which apply to and from the New York harbor area are group rates, and, as stated by the Commission, are based on average conditions (R. 48). As the rates are in fixed amounts regardless of the particular point of delivery or receipt within the group, and as the terminal expense necessarily varies with the varying terminal services required to effect such delivery or receipt, the carriers' margin

between revenues and expenses will differ in each instance. If such delivery or receipt can be accomplished with a minimum of terminal service and expense, the trunk lines are entitled to the greater margin of net revenue. The law casts on them no obligation to turn over to a shipper, a consignor, or a connecting carrier the difference between the margin in such a case and the lesser margin of net revenue where the particular delivery or receipt entails a maximum terminal service. Yet the Hoboken's case rests on the fundamental fallacy that because the railroads, in the case of Seatrain traffic, can accomplish shipside delivery or receipt of freight without unloading or loading the cars, they have an obligation to pay to it, for the ultimate use and benefit of Seatrain, all or part of the additional amount they would have expended if a maximum terminal service had been necessary. Obviously, if the railroads on every shipment moving on the New York group rates were required to perform the maximum terminal service, or expend the equivalent cost where the maximum service was unnecessary, the rates, which are fixed on the basis of average conditions, would be wholly inadequate.

The minor premise of appellee's basic proposition —that it is only by virtue of its agreement with Seatrain that the Hoboken and through it the trunk lines realize a "saving" of the expense for loading or unloading—is likewise without foundation in fact.

If the Hoboken realized from its payments to Seatrain an equivalent or greater "saving" there

would be no reason for it to seek reimbursement from the trunk lines. That it receives nothing under the agreement in the way of benefits which would bear upon the measure of the divisions it should receive out of the shipside rates is conclusively established by the Commission's finding that "the payments which complainant makes to Seatrain cover no part of its transportation service under the lighterage-free rates * * *" (R. 47). As just noted, any lesser expense incurred by the trunk lines in accomplishing a particular delivery or receipt of freight, where a maximum terminal service is unnecessary, is not properly to be considered as a "saving", since there is no obligation upon them to perform a maximum service or to incur a maximum terminal expense in all instances.

But assuming *arguendo* that the trunk lines incur a lesser terminal expense on Seatrain traffic, such "saving" does not derive from the agreement between the Hoboken and Seatrain, but results from the fact that Seatrain for its own purposes receives or delivers the freight in cars without any actual unloading or loading of the freight. This result would follow whether or not there were such an agreement with or payments to Seatrain. The suggestion that Seatrain would not have agreed to interchange cars with its subsidiary, the Hoboken, except pursuant to such a contract, can not avoid the conclusion that wherever Seatrain vessels might dock in New York Harbor, whether at Hoboken, N. J., or elsewhere, no expense for unloading or loading carload freight would fall upon

the railroads when Seatrain received or delivered the cars without the transfer of their lading. The impression obtained from a reading of appellee's brief—that Seatrain was reluctant to interchange cars with the Hoboken and agreed to do so only in consideration of the payments—is unfounded. The whole operation of Seatrain is based upon the physical carriage of cars upon its vessels. As the Commission found:

> "For the purposes of its own, Seatrain prefers to receive and deliver the loaded car" (R. 47).
>
> * * * * * * *
>
> "There is ample reason to conclude, also, that the improved method of transfer is only an incident to the Seatrain plan of transportation, and that this plan has sufficient advantages to impel its use and promotion by Seatrain regardless of any contributory payments from rail connections" (R. 48).

But further than this, the physical interchange of cars was so essential to Seatrain's operation that by means of its wholly-owned subsidiary, the Hoboken, it was enabled to, and actually did, take possession of railroad cars, in most cases without the consent of the owners.*

Since both premises of the Hoboken's basic proposition are groundless, its conclusion—that the trunk lines should put it in funds with which to pay Seatrain all or part of the "saving" of the expense for loading or unloading cars—also falls.

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* See *Investigation of Seatrain Lines, Inc.*, 206 I. C. C. 328, 330, 337, 338; *Hoboken Mfrs. R. Co. v. Abilene & S. Ry. Co.*, 237 I. C. C. 97, 98, and 248 I. C. C. 109; *Pennsylvania R. Co. v. United States* (U. S. D. C. D. of N. J. Civil No. 2092) ... F. S. ... (Oct. 9, 1943).

Corrections of Appellee's Statement of the Case.

Certain inaccuracies in appellee's statement of the fact should here be noted. Others have been noted above or will be covered in the replies to the several points of appellee's argument. Still others are not of importance to the determination of the issues before the Court.

The Case Involves the Division of the Eastern Rail Portions of Joint Rates With Seatrain.

In a footnote to pages 20-21 of appellee's brief it is stated that the division of joint through rates for rail and water transportation to which Seatrain is a party is not involved. Reference to the Record shows this statement to be in error.

The Hoboken's complaint which instituted this proceeding before the Commission put in issue its divisions of all[illegible]s and of primary rail divisions of joint rates wi[illegible]eatrain which were then in effect or which were thereafter to be established. This appears not only from the fact that the complaint named among the defendant railroads numerous Southern and Southwestern rail lines (R. 30-32), which would not have been proper parties if no joint rail-water-rail rates were involved, but also from the specific language of paragraphs 5, 7, 8, and 10 of the complaint (R. 23-26).

At the opening of the hearing, following the Examiner's reading of the issues, counsel for the Hoboken admitted that the subdivision of the rail portion of

certain northbound joint rail-water-rail rates in connection with Seatrain were involved and the Examiner ruled that "all joint rates now in existence are involved." (R. 140). Further, at Record page 149, counsel for the Hoboken stated:

> "Now, as I have already said, but which I have down in my statement, and to make it consecutive, I would like just to repeat—that this proceeding involves the divisions as between Hoboken on the one hand and the trunk lines and their connections on the other, of joint through rates only as applicable to freight delivered to or received from the same lines, whether those rates are published as local or proportional rates to or from Hoboken, or published as joint through rates to which Seatrain also is a party."

The payments by the Hoboken to Seatrain under the agreement of February 24, 1937, (R. 53) were provided for application to all rates or portions of joint rates under which the railroads make shipside delivery. That contract made no such restriction in its scope as appellee now attempts to suggest. Reference to paragraph 9 of that agreement will show that the payment of 73 cents per ton was to be made by the Hoboken "upon each and every ton of such freight interchanged between Railroad and Steamship and transported or to be transported by Railroad under rates which include compensation to Railroad and/or its connections for loading such freight on or unloading such freight from railroad cars * * *." (R. 56). In the opening recital of the agreement (R. 54)

the rates under which the railroads load or unload freight when necessary to the making of shipside delivery are "generally described as import, export, coastwise, intercoastal or lighterage-free * * *". At no time throughout the proceedings has the Hoboken suggested that these payments to Seatrain, which it has sought to recover through increased divisions from the trunk lines, did not apply, or were not to apply, to traffic moving on joint rail-water-rail rates to which Seatrain was a party and under which railroads make shipside delivery.

The fact that the parties for convenience referred to all of such rates and rail divisions of joint rates as "lighterage-free" was not misunderstood by the Commission. Thus, the Commission in describing the freight which the Hoboken interchanged between the trunk lines and Seatrain, comprehended all of it as moving under either lighterage-free or non-lighterage-free rates. It then used this significant differentiation:

> "Under lighterage-free rates the rail carriers undertake to unload freight from the cars and place it within reach of ship's tackle or to receive freight at the foot of ship's tackle and load it into the cars; under non-lighterage-free rates they do not undertake to unload or load the cars." (R. 34).

When after this case had been submitted to the District Court for its decision, the Court, through Judge Fake, inquired of counsel concerning the status of Seatrain's divisions case (I. C. C. No. 28668),*

* The complaint in this case appears in the Record herein at page 643.

counsel for the Hoboken responded with an extended explanation as to why the pendency of the latter case should not prevent a prompt determination by the Court of the instant proceeding. (R. 71-77). In view of the Hoboken's present suggestion that no joint rates with Seatrain are here involved, it should be noted that the letter of its counsel to Judge Fake (R. 73-77) written as late as January 10, 1942, took no such position, but only that the traffic moving under such rates was "a small proportion" of the whole (R. 75).

This present attempt on the part of appellee to narrow the scope of the Commission's decision on the issues presented to and determined by it can be explained only by an evident desire to escape the effect of the Commission's finding that the payments to Seatrain cover no part of the Hoboken service under such rates (R. 47), and to avoid the force of the conclusion that, to the extent of the application of the joint rates prescribed in *Seatrain Lines Inc.* v. *Akron, C. & Y. Ry. Co.*, 226 I. C. C. 7, 243 I. C. C. 199, the ground of the instant complaint—the recovery by Seatrain of compensation from the trunk lines for its use of its ship loading devices—is the identical ground on which Seatrain in I. C. C. Docket 28668 is now seeking greater divisions from the eastern railroads covering its water service under such joint rates (R. 643, 648-650).

It is to be noted, however, that the integrity of the Commission's conclusions and the finality of its find-

ings are not limited to, or dependent upon the existence of, joint rates with Seatrain. As to the greater proportion of the traffic which has moved on the separate rail and water rates to and from Hoboken, N. J., there was the same necessity for the Commission, in dividing as between the Hoboken and the trunk lines, to make the determinations which it did. The joint rates with Seatrain are of significance here, not because of the proportion of the traffic to which they are applicable, but because Seatrain's claims in respect of their division so clearly show that the question at the bottom of the instant litigation is a controversy between Seatrain and the trunk lines in which the Hoboken is not really, and should not be, involved.

APPELLEE'S ILLUSTRATIVE RATE IS NOT TYPICAL OF THE AVERAGE SEATRAIN TRAFFIC.

At page 19 of its brief appellee undertakes to illustrate the effect of the Commission's decision by use of an assumed rate of $7.00 per ton. While presumably the Court is not concerned with questions of the fairness of the Commission's apportionment, since they are for its administrative determination, it may be noted in passing that appellee's Exhibit 24 (R. 523, 275) indicates that the average eastern rail rate on Seatrain traffic was $3.91 per ton. For the reasons explained at pages 71-72 of the railroads' main brief, the $7.00 rate should not be assumed by the Court to be typical.

WHETHER THE GENERAL DIVISIONS AGREEMENT BETWEEN THE HOBOKEN AND THE TRUNK LINES COVERED SHIPSIDE RATES ON SEATRAIN TRAFFIC WAS NOT IN ISSUE AND HAS NOT BEEN DETERMINED.

At page 15 of its brief, as upon its complaint before the Commission (R. 25), appellee asserts that the general divisions agreement which has obtained between the Hoboken and the trunk lines was inapplicable to carload traffic interchanged with Seatrain which was not loaded or unloaded. The Hoboken has regarded the divisions agreement as covering such Seatrain traffic as was actually loaded or unloaded at Hoboken, N. J. (R. 25, 45-46), and the restriction of its demand for increased divisions to the rates on lighterage-free traffic implies that the general agreement covers the divisions of non-lighterage-free rates, although such freight is interchanged in the car without loading or unloading of the freight. Since the Hoboken's complaint (R. 22) invoked the Commission's jurisdiction under Section 15(6) of the Interstate Commerce Act (49 U. S. C., Sec. 15(6)) to determine reasonable divisions, the Commission was not concerned with the question, and did not determine, whether the general divisions agreement covered the Seatrain traffic. Whether or not it was previously so covered, the Commission's finding that the Hoboken's divisions were "not unjust, unreasonably low, inequitable, or unduly prejudicial to complainant," and its dismissal of the complaint, would operate to define the divisional rights of the participating carriers

thenceforward. *Alton R. Co.* v. *United States,* 287 U. S. 229, 237. While the Court below found that the agreement had been inapplicable on freight interchanged with Seatrain when the cars were not loaded or unloaded (R. 122), the question was not in issue before it, and no consideration was given to whether the agreement, despite the form in which it was couched (Ex. 2; R. 457, 159), nevertheless covered all the rates participated in by the Hoboken, as well when applied on Seatrain traffic as on other traffic to Hoboken, N. J., or to whether prior resort to the Commission would be necessary to such a determination. See *Great Northern Ry. Co.* v. *Merchants' Elevator Co.,* 259 U. S. 285.

Replies to Appellee's Argument.

REPLY TO POINT I.

A. Under section A of its Point I, appellee argues that appellants' major premise is that the Commission's determination of the point of interchange excused it from considering the reasonableness of the payments to Seatrain and that this premise is unsound. This argument overlooks the fact that the Commission also determined that the payments which the Hoboken makes to Seatrain "cover no part of its transportation service under the lighterage-free rates and are in addition to the full costs of that service" (R. 47), and disregards the further fact that the District Court held that the Commission's finding in this respect is final (R. 116). These appellants rely on this finding as well as upon the one relating to the point of interchange.

and in addition, upon the finding of the Commission that the existing divisions are not unjust, unreasonable, inequitable, or unduly prejudicial (R. 49).

These appellants urge that these several findings of the Commission determine all issues which were before the Commission and that in making such findings the Commission proceeded and acted in accordance with proper legal standards and principles.

B. In section *B* of its Point I, at page 38, appellee argues that although Seatrain's crane and cradle correspond to the booms and tackle of break-bulk vessels the payments are made to Seatrain by the Hoboken "in consideration of the 'benefit' accruing to the Hoboken and *its trunk line connections.*" (Italics inserted). Again at page 41, appellee again refers to the "benefits accruing to the Hoboken and the *trunk line railroads* * * *." (Italics inserted). These references confirm the fact that the underlying controversy, which Seatrain through its subsidiary the Hoboken seeks to have adjudicated in this proceeding, is one as between itself and the trunk lines in which the Hoboken is not a real party in interest, but is a mere pawn for Seatrain.

There is no occasion here to discuss the question whether Seatrain can have a claim against the trunk lines for lessened terminal expense to them when Seatrain employs its devices to load and unload its ships without disturbance of the freight in the car. Similarly there is no occasion here to discuss the question whether, where such a claim is made by Seatrain, as

in I. C. C. Docket No. 28668 now pending, the trunk lines could assert countering claims against Seatrain for the benefits it obtains and the saving of terminal expense which accrues to it by reason of its use of railroad freight cars for the performance of its transportation service by water. The important fact here is that Seatrain is not a party to the proceeding, and that the issues before the Commission are limited solely to the question of the lawfulness of the existing divisions, as between the Hoboken and the trunk lines, of the rail rates and revenues west of the railheads. Accordingly the Commission did not undertake to adjudicate any claim of Seatrain against the trunk lines by reason of the alleged "saving" to them by reason of its use of its ship-loading devices. Within the bounds of the issues before it, it did decide that "the payments which complainant makes to Seatrain cover no part of its transportation service under the lighterage-free rates * * *" (R. 47).

The "fanciful example" given at pages 38-40 of appellee's brief is not parallel to the instant situation. In the illustration Railroad X was a line-haul carrier and specifically agreed to the arrangement. Here the Hoboken is not the line-haul carrier, nor the one to be benefited by any such arrangement, and its agreement made with its parent company does not bind the trunk lines which are the line-haul carriers.

C. Section *C* of Appellee's Point I, at pages 42-44, is an argument predicated upon the assumption that the Commission's finding that the Hoboken's pay-

ments to Seatrain "cover no part of its transportation service" (R. 47), and the Court's holding that such finding is final (R. 116), do not mean what they say. On this point appellee refers to *United States* v. *Pan American Petroleum Corp.*, 304 U. S. 156, and *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402, cited by these appellants, and argue that they "uphold only the finality of a decision by the Commission determining the physical limits of a railroad service covered by its rates." A reference to those decisions will show that they cannot be so limited in their holding and implications. Both involved situations where the line-haul carriers were paying allowances for switching service by the industry which the Commission held to be beyond and in excess of the obligation of the railroads to make delivery under their line-haul rates. The decisions of this Court in sustaining the Commission's orders which required the railroads to discontinue payment of the allowances are here directly in point. The Commission has determined not only the point of interchange and the physical extent of the service comprehended under the rates to be divided, but in addition has specifically held that the payments made by the Hoboken to Seatrain "cover no part of its transportation service under the lighterage-free rates * * *". (R. 47).

The cases of *West Ohio Gas Co.* v. *Comm'n*, 294 U. S. 63, and *Driscoll* v. *Edison Co.*, 307 U. S. 104, 120, which are cited in appellee's brief at page 44, are not pertinent here. They approved the inclusion of ex-

penses for legal services as legitimate expenses to be taken into account in the determination of reasonable rates. But the District Court in the instant case noted that the Commission "held that the payments by Hoboken to Seatrain do not constitute a legitimate transportation cost" and, citing the *Pan American Petroleum case,* held that "upon this finding, supported by evidence, its judgment is final." (R. 116).

D. Under section *D* of its Point I appellee makes several separate arguments to which reply will here be made *seriatim.*

(1) Under subsection (1), at page 45, appellee reiterates, as it does at numerous points in the brief, that the rates involved *include compensation to the trunk lines for loading and unloading.* A sufficient answer to this contention will be found in the brief for these appellants at pages 50-56. But, if anything more were needed it would be found in the clear findings of the Commission among which are the following:

> "* * * it is the duty of the railroads under their tariffs to load and unload freight moving at lighterage-free rates *where such loading or unloading is necessary to the accomplishment of the through transportation,* * * * (R. 46). (Italics inserted).
>
> "The service which the railroads hold themselves out to perform under the lighterage-free rates includes the unloading of inbound cars and the placing of the lading within reach of the ship's tackle and a corresponding but reverse

service in connection with outbound freight. For purposes of its own, Seatrain prefers to receive and deliver the loaded car. The unloading or loading of the car lading and its delivery or receipt at ship's tackle is therefore unnecessary. The rail lines do all that is required when they place the cars in or take them from the Seatrain cradle." (R. 47).

"It is true, as complainant points out, that if the payments which it now makes to Seatrain are not borne by defendant rail lines through a decrease in their divisions and a corresponding increase of complainant's divisions, they will receive an unearned benefit. This comes about from the fact that this new method makes it unnecessary for the rail lines to perform all the service which they hold themselves out to perform under the lighterage-free rates." (R. 48).

"While the result has been to increase the divisions received by defendant rail lines under the lighterage-free rates without change in the service which they perform, this is because some of the service heretofore performed under the lighterage-free rates has become unnecessary." (R. 49).

(2) In subsection (2), at pages 45-46, appellee argues that except for the contract under which the payments are made, it cannot be assumed that Seatrain would have agreed to make its cradle available as an interchange point. It is difficult to see how Seatrain has conceded anything in respect of the interchange point, or how it could have designated an

interchange point which would have involved railroad service *beyond* the cradle, since admittedly the crane and cradle are the equivalent of ship's cargo booms and tackle, and since it is conceded that the railroads have no obligation in respect of the expense of loading cars on the ship. If Seatrain were to designate for interchange purposes a point short of the cradle, it would only increase the expense to be incurred by it in the performance of the terminal service incident to its water transportation. Seatrain does not desire to have the freight unloaded from the cars, and therefore the railroads could readily place cars alongside the Seatrain ships and thereby complete their obligation if Seatrain should prefer that method of delivery. But the fact is that Seatrain desires delivery at the cradle, and in fact the most efficient operation of its ship-loading facilities can only be obtained when the railroads place cars on and take them from the cradle. For these reasons the argument that the Hoboken must pay Seatrain in order to induce the latter to designate the cradle as the point of interchange appears to be far-fetched.

(3) In subsection (3), at page 47, reference is made to certain allowances paid by the railroads to various steamship lines for stevedoring service. As will be apparent from the portions of the Record referred to (R. 177, 423), the allowances were made for the actual performance for the railroads of loading or unloading service rendered under the railroad rates, and were not, as the Commission has found the

Hoboken's payments to Seatrain to be, for a service not performed and above and beyond the rail obligation.

This same comment also applies to what is said in the footnote at page 63 of appellee's brief.

(4) In subsection (4) at page 47 of its brief, appellee refers to "a tariff providing for the payment by the railroad 'of certain shifting allowances' ". The terms of such tariff and the conditions under which it applies are not of record. But whatever its terms, it can not assist appellee's case here. Obviously the railroads have no tariff provision which provides for payments to Seatrain for taking or making delivery of freight in cars or at Hoboken, N. J., rather than elsewhere in New York Harbor. Moreover, Seatrain is not a party to this proceeding, nor is there any issue here as to whether there is any difference in the trunk lines' terminal practices between Seatrain and other water carriers.

(5) Subsection (5) of appellee's brief (p. 48) criticizes the figures used in the brief of the Commission, which would compare the annual payments by the Hoboken to Seatrain with the royalties approximating $50,000 a year, formerly paid by Seatrain for use of the patent covering its method of ship loading and car carriage.* Based on the Hoboken's own evidence, the Commission found that in 1936 it paid

* Although not a matter of record, in the interest of accuracy, it is a fact that U. S. Patent No. 1,591,278, issued July 6, 1926, to Graham M. Brush, covering the Seatrain devices and method of operation and which was assigned by him to Railway Transports, Inc., expired July, 1943.

Seatrain approximately $110,000, and in 1937 approximately $400,000 (R. 39). The decision of the Court below makes reference to the same figures (R. 114). But if it be assumed that these payments were not limited to trunk-line traffic, it is nevertheless significant that appellee does not state what figure the record does support as the approximate annual amount of the payments to Seatrain under the contract involved. Moreover, the Commission's conclusion that they cover no part of the Hoboken's transportation service under the rates to be divided would indicate that, whatever their amount, there was no justification for them.

(6) Subsection (6), at pages 49-52 of appellee's brief, deals with considerations which were for the Commission in determining the questions before it, and which were cited by appellants to show that there was evidence to support its findings. See for example the Brief for Railroad Appellants, pages 68-74. But the Court is not otherwise concerned with them here, since it is not within its province to override the Commission's findings upon an administrative question based upon its own independent weighing of the evidence.* There are some errors, however, in these portions of appellee's brief which may be noted.

In paragraph (*c*) at page 51, it is stated that railroad appellants do not explain their retention of more revenue out of the rates on freight interchanged with Seatrain than on freight interchanged with other

* See cases cited in Brief for Railroad Appellants, pp. 32-33.

steamships "or than remains to them after their terminal operations on freight which they, themselves, lighter to and from shipside."

It is submitted that a complete justification for the difference is set forth at pages 50-60 of the brief of these railroad appellants. Of greater pertinency would be the question as to why the Hoboken, in delivering carload traffic to Seatrain, should receive 75 cents per ton more on the freight moving under lighterage-free rates than on freight moving under non-lighterage-free rates when its service is identical in both instances and it admits the reasonableness of its existing divisions on the non-lighterage-free traffic?

REPLY TO POINT II.

In its Point II (53 ff.) appellee argues that the Commission failed to consider and determine "the value to Hoboken and its trunk line connections of the interchange arrangement with Seatrain" and what would be a reasonable payment to Seatrain to be recovered from the trunk lines by way of divisions.

The Commission considered this question at length. This was what the case was about. The Commission determined that the payments by the Hoboken to Seatrain purchased *nothing* in the way of the actual performance of its transportation service under the rates to be divided. Thus, the Commission found that "the payments which complainant makes to Seatrain cover no part of its transportation service under the

lighterage-free rates * * *" (R. 47). It is apparent from appellee's argument that it seeks to induce the Court to reach a different decision on the facts than made by the Commission in its administrative capacity, which, of course, it is not the function of the Court to do.

The argument of appellee on this point furnishes additional corroboration for the conclusion that the underlying controversy is one as between Seatrain and the trunk lines, and that the contract with the Hoboken is a mere device employed by Seatrain to try to force the trunk lines to incur the same expense for terminal service when interchange is made with it as if loading or unloading of cars were necessary thereto.

A. In section *A* of its Point II (p. 56 ff.) appellee argues that the Commission assumed that its decision as to the point of interchange excused it from determining what compensation the Hoboken might properly pay Seatrain. This argument overlooks the fact that the Commission made a finding not only with respect to the point of interchange, but also the further finding that the payments made by the Hoboken to Seatrain covered no part of its transportation service under the lighterage-free rates. This was a determination that Seatrain under the contract performed no part of the rail transportation service for the Hoboken and that therefore no payment by the Hoboken to Seatrain thereunder could be recovered by it from the trunk lines by way of divisions. This was

a direct determination of the question which appellee argues the Commission failed to consider.

The Hoboken further argues that it is only by virtue of the contract that the cradle is the point of interchange, and that the railroads are thereby enabled to complete their obligation. But aside from the underlying error in assuming that there is an obligation on the railroads to load or unload or to lighter freight when those services are not necessary, the argument is untenable. The railroads complete their obligation without unloading the freight not because the cradle is designated as the point of interchange, but because Seatrain does not desire to have the freight unloaded from the car.

But the Hoboken argues (pp. 54-55) that if the freight were delivered loose, it would be at an expense for loading or unloading the cars, and that therefore when it receives a loaded car from Seatrain the latter "actually fulfills for Hoboken a part of Hoboken's transportation obligation and undertaking", that Seatrain does this "under the terms of the contract", and that it is for these things that the payments to Seatrain are made.

There are several answers to these arguments:

(1) The Commission has specifically found that the payments cover no part of the Hoboken's transportation service, which is to say that it has found that Seatrain under the contract performs no part of the service under the rail rates.

(2) It is not the contract that makes the unloading or loading unnecessary, but the fact that Seatrain, for its own convenience and operating necessities, takes and delivers the cars without unloading the freight.

(3) The Hoboken's argument leads it into absurd positions. Thus, in arguing Seatrain's case—since the case is not really its own, as is apparent from the Commission's finding—the Hoboken suggests (pp. 55-56) that because Seatrain could not have gotten the car aboard at New Orleans or Havana without using its devices, the Hoboken should pay it as for loading the freight into the car at Hoboken, N. J. With respect to the movement in the reverse direction the Hoboken argues that were it not for Seatrain's use of its facilities, an unloading by the Hoboken would be necessary to delivery of the freight to the vessel. These arguments thus lead the Hoboken into the position of contending that Seatrain's use of its facilities at New Orleans, at Havana, and at Hoboken, N. J., are all for the sole benefit of the Hoboken!

But this is not all. At page 58 of its brief, appellee states that it makes payments to Seatrain to induce it to take care of the cars and to pay for them when being used in Seatrain's service. It is indeed strange logic which is used in the attempt to justify a requirement that the trunk lines through the Hoboken should pay to Seatrain approximately $22.55 per car*

*Computed from the average weight per car of 30.9 tons (R. 523) at 73 cents per ton (R. 56).

to induce it to be responsible and to pay for the railroad cars which it uses.*

(4) The fallacy of the argument which the Hoboken here makes for Seatrain can be illustrated by considering the situation where a car is interchanged between two railroads in handling a through joint-line shipment on which is charged the sum of the two separate rates on each railroad. Because the separate rates would also apply on single-line shipments to or from the junction station, and would comprehend the performance of terminal services at origin and destination as well as line-haul service, and since the interchange service between the two railroads would be less onerous and expensive than a full terminal service by each, it could be argued (if appellee's contention were sound) that the first railroad should make a payment to the second since it was saved some terminal expense at the point of interchange. But on the same theory it could likewise be argued that the second railroad should pay

* Since the inauguration of Seatrain's service from Hoboken, N. J., to New Orleans (Belle Chasse), La., via Havana, in October, 1932, a controversy has existed concerning the right of Seatrain to take railroad owned cars for use in its service, and concerning the right of the Hoboken and the New Orleans & Lower Coast railroads to deliver cars to Seatrain for its use, and concerning the terms, conditions, and compensation which should attend upon such use if required. *Investigation of Seatrain Lines, Inc.*, 206 I. C. C. 328; *Hoboken Mfrs. R. Co. v. Abilene & S. R. Co.*, 237 I. C. C. 97, and 248 I. C. C. 109. The Commission's order in the last decision, which required numerous railroads to cease from prohibiting interchange of their cars with Seatrain and to establish rules for such interchange at the rate of $1.00 per car per day for such period as the cars were in Seatrain's actual possession was set aside in a decision, filed Oct. 9, 1943, by the United States District Court for the District of New Jersey in *The Pennsylvania Railroad Company, et al. v. United States*, Civil No. 2092.

something to the first since it likewise was saved some terminal expense by the interchange of the car.

(5) At pages 56-57 of its brief, appellee cites certain cases which deal with the question of what constitutes a sufficient delivery to a connecting carrier. These cases do not assist its argument. What constitutes delivery of a shipment is a question of fact, and what constitutes delivery by one carrier to a connecting carrier is likewise a question of fact. The Commission as the expert administrative body, acting on substantial evidence, has here determined that fact, and it is not within the province of the Court to set aside its determination in that respect.

(6) Appellee concedes that the Commission may disregard an improvident contract in the fixing of divisions, but argues that the Commission did not here determine that point. But it would be difficult to conceive how the Commission could have made its finding more clear. It flatly held that "the payments which complainant makes to Seatrain cover no part of its transportation service under the lighterage-free rates" (R. 47). In view of the completeness and conclusiveness of this finding, there was no need to label the payment as "improvident". The fact is that the Commission disallowed it altogether, and did not fail to make a finding concerning it as asserted by appellee. This is not a matter on which the Court is entitled to require a different conclusion.

B. In section *B* of its Point II, the appellee argues that the Commission disregarded the payments

on the ground that the contract was between Seatrain and its subsidiary and was therefore not binding upon the Hoboken. This argument erroneously assumes that the Commission's finding concerning the payments was based on Seatrain's control of the Hoboken. If the Hoboken had been entirely independent of Seatrain and had entered into a like contract, the Commission's holding would necessarily have had to have been the same, *i. e.*, that the payments covered no part of its rail transportation. It is to be remembered that the whole case before the Commission was concerned with the legitimacy of these payments, and the report gives every indication of the most careful consideration of the nature of the payments, and the nature of the services of the several carriers involved. The Commission's finding that the payments covered no part of the Hoboken's transportation service was wholly without reference to the question of its control by Seatrain, as an examination of its opinion will confirm.

The supposed example of a contract with Pan-Atlantic Steamship Corporation, at page 60 of appellee's brief, is inapt. Aside from the fact that the text and the footnote appear to proceed upon inconsistent factual situations, the criterion employed by the Commission would disallow payments by the Hoboken to Pan-Atlantic if they did not secure for appellee the actual performance of some portion of the rail transportation service actually rendered as distinguished from merely being made unnecessary.

But, of course, the fact that the Commission's ruling would have necessarily been the same, regardless of the independence or dependence of the Hoboken, does not at all imply that the Hoboken would have made such a contract were it independent of Seatrain. Every consideration points to a contrary conclusion.

(1) Although the Hoboken needed around 60 cents per ton to pay for its switching service, including a fair return, it obligated itself by the contract of February 24, 1937 (R. 53)—which was made after the complaint before the Commission was filed—to pay Seatrain 73 cents per ton on all lighterage-free freight, which resulted in an out-of-pocket loss of 13 cents per ton with nothing left to compensate it for its switching service! And for what did it make this contract? For exactly nothing, as the Commission has found, so far as the performance of any of its rail transportation service under the lighterage-free rates was concerned.

(2) Unless one refuses to regard realities, he must see that the underlying controversy, though not before the Commission or the Court in this case, is one between Seatrain and the trunk lines as to whether they should be required to pay it something because of the fact that they do not incur an expense for loading or unloading cars which are interchanged with it. No such controversy is here, since Seatrain is not a party and the issues do not cover. In any litigation where such an issue was raised, the trunk

lines would have opportunity to show the countering advantages which Seatrain obtains through use of railroad owned cars, etc., etc. But they cannot do so here. Under these circumstances the impression cannot be avoided that Seatrain has used its control over the Hoboken to seek to obtain payments from the trunk lines under conditions where they are powerless to assert their countering claims against it.

(3) Throughout its brief appellee is at great pains to justify its contract with Seatrain, and continually refers to Seatrain's negotiations with the Hoboken's former management as proving that the terms agreed upon were reasonable from the Hoboken's standpoint. Two facts may be considered in this connection. Seatrain acquired control of the Hoboken, April 26, 1932 (R. 33). The first contract with the Hoboken for the payment of allowances to Seatrain was dated November 21, 1932 (R. 50). But this contract is not the one on which the present controversy is founded. Under the 1932 contract Seatrain was obligated to perform a definite part of the Hoboken's rail switching service, but under the contract of February 24, 1937, Seatrain, as the Commission has found, performs none of the Hoboken's rail transportation service. (R. 38, 47).

C. In section *C* of its Point II (pp. 66-68), appellee argues that the Commission was in error in finding (R. 48)—

> "No such payments have, so far as the record shows, been exacted or obtained by Seatrain from an independent rail connection."

To support this charge appellee states (1) that such payments were exacted from the Hoboken when it was independent, (2) that evidence offered, but excluded by the Commission's Examiner, would have shown that Seatrain's original negotiations with New York Harbor lines for a terminal contemplated the making of payments to Seatrain, and (3) that the trunk lines make payments to steamship lines in connection with services performed by the latter in the interchange of freight between them.

Concerning the first point, Seatrain acquired control of the Hoboken April 26, 1932 (R. 33), and its original contract whereby the Hoboken agreed to make payments to it bears date November 21, 1932, or after the Hoboken had ceased to be independent (R. 50). Under this contract, however, Seatrain performed for the Hoboken the actual rail switching service between the hold yard and the cradle (R. 38, 51-52). Under the later contract of ~~November~~ February 24, 1937, which is the contract here particularly involved, Seatrain performs no such service for the payments made by the Hoboken to it in respect of lighterage-free freight. The Commission's finding on this subject (R. 38) is as follows:

> "The original contract entered into November 21, 1932, provided that complainant should pay Seatrain 40 cents per ton on all freight, other than coal, interchanged between them. A part of the consideration for this payment was that Seatrain, as agent for complainant, should move the cars between complainant's hold yard and Seatrain's

car cradle, the agreed point of interchange. This contract was superseded effective March 1, 1937, by a contract, still in effect, which provides that complainant shall pay Seatrain 73 cents per ton on all freight interchanged between them which moves on lighterage-free rates but nothing on freight moving on non-lighterage-free rates. Under this contract Seatrain does not move the cars between complainant's hold yard and the car cradle, all such service being performed by complainant."

As to the second point, it must be obvious that if the tendered evidence of early negotiations with the trunk lines had not been excluded, it would not have assisted appellee's argument here, since Seatrain's location of its terminal on the rails of the Hoboken necessarily connotes a failure of the earlier negotiations with the trunk lines to result in any agreement.

As to the third point, the payments which the trunk lines make to steamship lines, to which appellee refers, are payments for the services of steamship stevedores in performing for the railroads a definite physical portion of the rail transportation service, *i. e.* the loading or unloading of the cars. In the case of Seatrain traffic the cars are not loaded or unloaded. Such payments are, therefore, not parallel to the payments made by the Hoboken to Seatrain, which as the Commission has found cover no part of the Hoboken's transportation service under the lighterage-free rates (R. 47).

But aside from these considerations appellee's point is here without merit. The question for the Court's determination is whether the Commission acted within the scope of its powers and whether its findings are supported by substantial evidence. These appellants submit that the record requires an affirmative answer on these points.

D. In section *D* of its Point II, appellee argues that the Commission was without support in the evidence in finding that "there is ample reason to conclude, also, that the improved method of transfer is only an incident to the Seatrain plan of transportation, and that this plan has sufficient advantages to impel its use and promotion by Seatrain regardless of any contributory payments from rail connections." To support this point appellee reiterates the arguments made under subsection *C*. These arguments have been answered in the immediately preceding portion of this brief and need not be repeated.

That there is evidence to support the Commission's finding in this respect cannot be open to any real question.

The Seatrain method of carrying loaded railroad cars by vessel and of loading and unloading the cars to and from the ship was devised by a steamship operator, Mr. Graham Brush, President of Seatrain. The devices employed relate to water transportation, and have as their principal objective the facilitation of the loading and unloading of the vessels, thus saving time in port, and the better preservation of

the freight by eliminating its handling to and from railroad cars at the steamship terminal (R. 330-332, 372, 386).

It should be borne in mind that the Commission, in disallowing the inclusion of the payments in the Hoboken's divisions did not assume or determine that Seatrain would not attempt to assert some claim against the trunk lines in respect of any advantages which might accrue to them from its use of its ship loading devices. But no such claim could be asserted here, where Seatrain is not a party and where the railroads cannot assert against Seatrain such countering claims as they may have against it, such as for the benefits Seatrain obtains from its use of their cars.*

REPLY TO POINT III.

Appellee's Point III, relating to confiscation, is most illuminating in that it discloses that Seatrain and not the Hoboken has the real interest in the question which has been attempted to be litigated in this proceeding. It further makes clear that the trunk lines, and not the Hoboken, are the other party to the underlying controversy. Thus, at pages 73-74 of its brief appellee states:

> "Under the Commission's decision, Hoboken's expenses could be kept within the division of 60

*On October 9, 1943, in *Pennsylvania R. R. Co. et al. v. United States*, in Civil No. 2092, a three Judge United States District Court for the District of New Jersey set aside the order of the Commission of October 13, 1941, which required the railroads to permit delivery of their cars to Seatrain for use on its route between Hoboken, N. J., and Belle Chasse, La. See *Hoboken Mfrs. R. Co. v. Abilene & S. Ry. Co.* 248 I. C. C. 109.

> cents only if it should breach its agreement and cease to make the payments to Seatrain provided for in the contract pursuant to which the interchange is accomplished. *It would then be Seatrain that would be denied compensation.* In either event, the result of the Commission's order would be to transfer to the *trunk lines* without any consideration or compensation from them all of the benefits and savings resulting from the arrangement between Hoboken and Seatrain and from the use, pursuant thereto, of Seatrain's special facilities in making possible an improved method of interchanging freight between a railroad and a water carrier." (Italics inserted).

The District Court made no finding on the question of confiscation (R. 118), and the Hoboken is in no position to raise such a question now. Its argument, however, on this point, by showing that the real interest is that of Seatrain and not that of the Hoboken, confirms the conclusion that the Commission was correct in its determination that the payments which the Hoboken "makes to Seatrain cover no part of its transportation service under the lighterage free rates and are in addition to the full costs of that service." (R. 47).

Concerning appellee's statement that, under the Commission's decision, its expenses could be kept within its revenues only if it should cease to make the payments to Seatrain under the contract, it would seem, in view of the Commission's finding just quoted, that the payments should cease. The situation is some-

what similar in principle to the numerous cases wherein railroads had agreed to pay allowances to shippers for performing switching services at their industrial plants and the Commission subsequently found that the services covered by the allowances were not included in the rail rates. In such instances the allowances were discontinued, and the industries either performed the switching services at their own expense or paid the railroads additional amounts for doing the work. See, for example, *United States* v. *Pan American Petroleum Corp.*, 304 U. S. 156, 157, and the Interstate Commerce Commission cases there cited.

This implied admission by appellee that its expenses could have been kept within its revenues if it had not make the payments to Seatrain, coupled with the Commission's findings in the report, compels the conviction that Seatrain's dealings with the Hoboken have not been conducted with the sole object of maintaining its solvency. Thus, the agreement of February 24, 1937, provided for the making of payments to Seatrain of 73 cents per ton on all lighterage-free freight, although the Hoboken was receiving but 60 cents per ton for its switching service, and, after making such payment, which exceeded its gross revenue thereon, would have nothing to compensate it for performing its switching service. And these payments were begun long before there was any prospect of a final determination of the divisions question by the Commission, and without any certainty that

the Commission would sustain the inclusion of such payments in the Hoboken's costs which could be recovered from the trunk lines by way of divisions.

But this is not all. As shown by the Commission's decision herein (R. 43), Seatrain about March 1, 1937, made another agreement with the Hoboken whereby the latter's compensation, paid to it by Seatrain for performing certain switching service for Seatrain on its lighterage traffic, was reduced from 40 cents per ton, or an average of $14.55 per car, to $2.50 per car. The Commission's statement in this respect is pointed (R. 43):

> "While it is not intended to find on this record that 40 cents per ton is a reasonable charge for this service, it is believed that in comparison with complainant's other charges and divisions it is more appropriate than the existing charge of $2.50 per car."

Moreover, the Commission further found that about the same time the Hoboken's charge to Seatrain for switching its local carload traffic was substantially reduced (R. 43).

Considering the nature of these various transactions which occurred while the Hoboken was under Seatrain's control, it is not surprising that, as stated at pages 27-28 of appellee's brief, the Hoboken is now involved in reorganization proceedings under Section 77 of the Bankruptcy Act (11 U. S. C. Sec. 205).

Conclusion.

Having shown, as they submit, that the brief of appellee furnishes no valid answer to the points urged in ~~appellee's~~ appellants' main brief against the decree of the District Court, these appellants respectfully submit that the decree of the District Court is in error and should be reversed.

Respectfully submitted,

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NOVEMBER 8, 1943.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 926

INTERSTATE COMMERCE COMMISSION, THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.,

Appellants,

vs.

HOBOKEN MANUFACTURERS' RAILROAD COMPANY,

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

STATEMENT OPPOSING JURISDICTION.

PARKER MCCOLLESTER,
Counsel for Appellee.

JOHN DREWEN,
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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 1100

HOBOKEN MANUFACTURERS' RAILROAD COMPANY,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant,

and

INTERSTATE COMMERCE COMMISSION, THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.,

Intervening Defendants.

STATEMENT BY PLAINTIFF-APPELLEE UNDER PARAGRAPH 3 OF RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

Plaintiff-appellee having been served with a copy of the Jurisdictional Statement by defendants-appellants under Rule 12, herewith submits its statement opposing in part the said statement of defendants-appellants.

I.

As to the Supreme Court's Jurisdiction Under Applicable Statutes.

Plaintiff-appellee agrees with defendants-appellants in believing that the statutory provisions cited in subdivision A of their jurisdictional statement sustain the jurisdiction of the Supreme Court of the United States to review the judgment ~~and decree~~ herein, but only for the reason that the suit herein was a suit pursuant to U. S. C. Title 28, Section 41 (28) and Sections 43 to 48, inclusive, to set aside and annul an order of the Interstate Commerce Commission and that under the statutory provisions cited a direct appeal as a matter of right may be taken to the Supreme Court to review a final judgment or decree of a District Court in such a case.

II.

In Opposition to the Statement of the "Nature of the Case and of Rulings Below" in Subdivision D of Defendants-Appellants' Jurisdictional Statement.

While admitting the Supreme Court's jurisdiction by virtue of the applicable statutes, plaintiff-appellee is compelled to oppose much that is asserted in subdivision D of the Jurisdictional Statement of defendants-appellants for the reason that it conveys an erroneous impression of the nature of the proceedings before the Commission and of the decision of the Court below; and for the further reason that, even if correct, it would not add to or detract from the jurisdiction of the Supreme Court under the statutes.

Plaintiff-appellee respectfully refers to the record, including the report of the Interstate Commerce Commission and the Opinion, Findings of Fact and Conclusions of Law of the District Court for a correct and complete statement

of the case, of the matters in issue, and of the decisions herein. But for present purposes it objects to the following, among other features, of the defendants-appellants' Jurisdictional Statement.

A.

On page 3 of defendants-appellants' Jurisdictional Statement a sentence is quoted from the opinion of the District Court that "There is here no contention that the proceedings before the Commission were not fair and adequate in every way."

This sentence is quoted out of its context apparently to create the impression, which is thereafter argued more at length, that the Commission did everything that it should and that, therefore, the lower Court in setting aside the Commission's order dismissing the complaint was usurping functions within the province of the Commission and adequately exercised by it.

However, although it was conceded that there had been full and fair hearings before the Commission, so far as the presentation of evidence was concerned, except that it was alleged (Plaintiff's petition, paragraph XV) that the Commission erroneously and arbitrarily refused to receive certain evidence tendered by plaintiff, it was never agreed that the Commission fulfilled its duties and considered and made findings as to matters on which a determination was sought and required, and the opinion of the District Court makes it clear that by referring to the proceedings as "adequate in every way" it did not intend so to hold. Indeed it held directly to the contrary, for the whole burden of its decision is that the Commission failed to do what was required of it.

B.

Thereafter, throughout subdivision D of defendants-appellants' statement, there is an obvious attempt to create

the impression, which we submit would be wholly erroneous, that the District Court was asked to and did substitute its judgment for that of the Commission as to matters peculiarly within the function of the Commission, which the Commission determined after fair and adequate proceedings, and that the Supreme Court should therefore take jurisdiction to correct improper interference by the District Court with the administrative process.

On the contrary, the District Court, far from substituting its judgment for that of the Commission on an administrative matter primarily within the Commission's function, set aside the Commission's order dismissing plaintiff's petition and directed that the Commission reopen the proceeding *for the very reason that the Commission failed to exercise its judgment and to make a determination on matters peculiarly within its province.* The opinion of the District Court holds that this failure was the result of errors of law on the Commission's part.

C.

The plaintiff-appellee, hereinafter referred to as the Hoboken, is a short switching railroad serving various steamship piers on the Hoboken, N. J. waterfront of New York Harbor. On behalf of the intervening railroad defendants, commonly called the trunk line railroads, it completes the service covered by their freight rates in the case of freight interchanged with vessels docking at piers served by it. It is compensated for its services by divisions of the joint through rates published by the trunk lines and their connections.

These rates are of two kinds: (a) local rates, under which the railroads' service begins and ends with the placement of a car in a convenient position for loading or unloading and under which the Hoboken's service is limited to merely

switching the car; and (b) so-called lighterage-free or shipside rates, which include compensation to the railroads for and under which they undertake the receipt of freight brought in by ships at the foot of ship's tackle alongside ship, the handling of the freight to and its loading into cars, the furnishing of the necessary cars for the purpose and, in the case of freight moving in the reverse direction, the unloading of the cars and the handling of freight to shipside. The Hoboken's compensation or division out of the rates in the first category, where its obligation is limited to switching alone, is 60 cents a ton. When it loads and unloads freight and handles it between shipside and car its division is $1.35 per ton, the difference representing the cost of loading, unloading and handling for which the shippers pay the railroads by the lighterage-free rates.

Seatrain Lines, Inc. is a water carrier which has developed a type of ship designed to carry freight in railroad cars, together with a crane with so-called cradle for the transfer of railroad cars with freight loaded therein between a railroad track on a pier and its vessels. When Seatrain by means of its special facilities delivers freight to a railroad already loaded in a car the railroad is saved the burden of furnishing the car for the rail movement and the labor of handling the freight from shipside and loading it into the car. Similarly, when Seatrain accepts freight already loaded in a car, the railroad is relieved from the labor and expense of unloading the freight from the car and handling it to shipside.

The proceeding before the Commission involved the amount of the division to be paid by the trunk line railroads to the Hoboken, out of the lighterage-free or shipside rates on freight interchanged with the vessels of Seatrain. The Hoboken and Seatrain had entered into a contract by which Seatrain agreed to deliver and receive freight in cars on its cradle and the Hoboken had contracted to make a pay-

ment to Seatrain in consideration of the savings in labor and expense to the railroads and the benefits of the added traffic resulting from Seatrain's method of interchange and as compensation to Seatrain for producing these savings by the use of its special facilities and for the responsibilities assumed by it in connection therewith.

The trunk line railroads had insisted on paying the Hoboken on such freight a division of only 60 cents a ton, thus making it impossible for the Hoboken to pay any compensation to Seatrain, and keeping for themselves the entire savings in labor and expense produced by Seatrain's method of interchange. Therefore, the Commission was appealed to to determine the divisions which the Hoboken should receive out of the lighterage-free rates on Seatrain freight.

Because Seatrain had acquired all the stock of the Hoboken, it was recognized that the contract between them could not be accepted as conclusively determining the proper compensation to Seatrain (although an agreement providing for payment had previously been arrived at before Seatrtain acquired the stock and at a time when the Hoboken and Seatrain dealt with each other at arm's length). The Commission was therefore asked to consider and determine what would be just and reasonable compensation to be paid by the Hoboken to Seatrain and to be reimbursed to the Hoboken in its divisions out of the lighterage-free rates.

The Commission failed to make such a determination and instead, upon a finding that the point of physical interchange was the cradle and that operation of Seatrain's facilities in transferring cars between the pier and its vessels was a part of its water carrier service, it held that no payment to Seatrain could properly be considered a part of the cost of the Hoboken's rail service. It thereby ignored entirely the fact that the use by Seatrain of its facilities operated to relieve the Hoboken and its trunk line con-

nections of the labor and expense of loading, unloading and furnishing cars, for which their rates included compensation to them. Its failure to consider and make the determination requested and its decision that the division of 60 cents was adequate, this being the amount which the trunk lines had allowed the Hoboken and which covered only its switching costs, had the obvious effect of either preventing the Hoboken from paying any compensation to Seatrain or of doing so without reimbursement. It thus upheld the trunk lines in retaining all that portion of the lighterage-free rates representing compensation paid by shippers for the labor and expense of loading, unloading and handling from which the railroads were saved by Seatrain's methods and facilities and transferred to the trunk lines all of the savings and benefits of the Seatrain method of interchange with no consideration to either the Hoboken or Seatrain therefor.

Instead of determining what would be reasonable compensation to Seatrain under the circumstances and how the benefits of the new interchange method should be divided between the Hoboken and the trunk lines, the Commission justified its action upon the ground that the corporate relationship deprived the contract of any probative force that the Hoboken should pay compensation to Seatrain, and that there was reason to believe—a conclusion with no support in the evidence—that Seatrain could be expected to give the benefits of its patents, facilities and undertakings to the Hoboken without compensation (although on the Commission's decision they would really be given to the trunk line railroads). The Commission also erroneously remarked that it did not appear that Seatrain had been able to exact an agreement for compensation from any other railroad with whom it had bargained at arm's length, disregarding the fact that it had done this very thing in the case of the Hoboken itself when it was independent.

The District Court, far from attempting to substitute its judgment for that of the Commission, decided that the Commission by failing to consider what would be reasonable compensation failed to fulfill its own duties under the statute and merely directed the Commission to consider and make a determination on facts which under Section 15 of the Interstate Commerce Act it was obligated to consider.

III.

Pending Petition to Commission for Reopening.

As just stated, one of the reasons given by the Commission for its summary disposal of the matter was that it did not appear that any contract had been made with Seatrain for payment of compensation by a railroad with whom Seatrain had dealt at arm's length. This was in error on the record then before the Commission. Furthermore, apart from the order of the District Court directing the Commission to reopen the proceeding, the plaintiff-appellee has filed a petition with the Interstate Commerce Commission asking the Commission to reopen the proceeding before it to receive evidence that since the record before the Commission was closed Seatrain has entered into at least two contracts with groups of railroads with whom it has dealt at arm's length, by which these railroads have agreed to make payments to Seatrain similar to those provided for in the contract between the plaintiff-appellee and Seatrain. The Commission has so far not acted upon this petition.

This situation is presented because it is believed that the Supreme Court is considering whether it should receive briefs and hear oral argument at this stage should be fully informed as to the status of the matter before the Com-

mission, on a point which the Commission itself regarded as material.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 43

INTERSTATE COMMERCE COMMISSION, THE BALTIMORE AND OHIO RAILROAD COMPANY, *et al.*, *Appellants*,

vs.

HOBOKEN MANUFACTURERS RAILROAD COMPANY, *Appellee*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY

BRIEF FOR APPELLEE, HOBOKEN MANUFACTURERS RAILROAD COMPANY

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 43

INTERSTATE COMMERCE COMMISSION, THE BALTIMORE AND OHIO RAILROAD COMPANY, *et al.*, *Appellants*,

vs.

HOBOKEN MANUFACTURERS RAILROAD COMPANY, *Appellee*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY

BRIEF FOR APPELLEE, HOBOKEN MANUFACTURERS RAILROAD COMPANY

Opinions Below

The opinion of the specially constituted District Court (R. 109) is reported in 47 F. Supp. 779.

The decision of the Interstate Commerce Commission (R. 32) to review which the action was instituted, was rendered in *Hoboken Mfrs. R. Co.* v. *Akron, C. & Y. Ry. Co.*, Docket No. 27630, and was reported in 234 I. C. C. 114.

As to the Jurisdiction of this Court

The action in the Court below was brought under the provisions of acts approved June 10, 1910 (38 Stat. L. 1149), and October 22, 1913 (38 Stat. L. 219), commonly referred to as the Commerce Court Act and the Urgent Deficiencies Act, all as re-enacted in Title 28, U. S. C. A. Section 41(28) and Sections 43-48, inclusive, having to do with suits brought to enjoin and set aside orders of the Interstate Commerce Commission.

The fact that the Commission's order was negative in form does not deprive the courts of jurisdiction, *Rochester Telephone Corporation* v. *United States*, 307 U. S. 125; *Alton R. Co.* v. *United States*, 287 U. S. 229.

The direct appeal from the final decree of the Court below was taken to this Court under the provisions of U. S. Code, Title 28, Sections 47a and 345.

Probable jurisdiction was noted by this Court on May 3, 1943 (R. 658).

The Statutes Involved

The proceeding before the Interstate Commerce Commission was instituted under the provisions of Sections 1(4) and 15(6) of the Interstate Commerce Act (49 U. S. C. A., 1(4) and 15(6)). These are reproduced in the Appendix.

The Questions Involved

In a proceeding in which the Interstate Commerce Commission was called upon to determine the divisions between the appellee, a switching line, and its trunk line railroad connections of lighterage-free rates paid by shippers, which included compensation to the railroads for loading and unloading cars in connection with the interchange of freight with steamships, where the Commission correctly proceeded upon the theory that the appellee, being a switching line, was entitled to divisions which would cover the full costs of its service, and where the appellee had entered into a

contract with a water carrier, Seatrain Lines, Inc., for an interchange arrangement whereby the loading and unloading of freight into and from railroad cars in accomplishing interchange was eliminated and the railroads were saved this labor and expense, and whereby additional traffic was secured by the appellee,

1. Did the District Court err in sending the proceeding back to the Commission for consideration and finding as to the value to the appellee and its trunk line connections of the benefits and savings derived by them from the interchange arrangement and as to the amount of the reasonable compensation, if any, which it would be consistent with the efficient and economical operation of the appellee for it to pay to Seatrain in consideration of the benefits of the interchange arrangement and to determine the division of the rates to be received by the appellee in the light of including such reasonable payments in the full cost of its service?

2. Did the Commission err in excluding, for the reasons stated in its report, any payment to Seatrain as a part of appellee's full cost and in failing and refusing to consider and make a finding as to the amount of such payment, if any, which would be reasonable and consistent with the efficient and economical management and operation of the appellee in consideration of the benefits and savings secured by it and its trunk line connections from the interchange arrangement?

Statement of the Case

A. The Nature of the Action

The action was instituted by appellee in the Court below to review and set aside an order of the Interstate Commerce Commission dismissing a complaint filed with it by the appellee, hereafter generally referred to as the Hoboken. The United States was named defendant as required by the

statute and the Interstate Commerce Commission and the trunk line railroad appellants intervened (R. 57, 64).

By its complaint (R. 22-32), the Hoboken had asked the Commission to determine and prescribe the just and reasonable division between it and its trunk line railroad connections, respectively, of joint through rates, known as lighterage-free rates, for rail transportation to and from New York Harbor, including the waterfront of Hoboken, N. J., as applied to freight interchanged by the Hoboken with the vessels of Seatrain Lines, Inc., a water carrier, hereafter referred to as Seatrain. The complaint alleged that the division of 60 cents a ton which the trunk line railroads had allowed to it out of these rates was inadequate and unjust to it, and that by retaining the balance for themselves the trunk lines were retaining unreasonable, unjust and excessive divisions. In particular, the complaint alleged that the division of 60 cents was inadequate since it did not cover Hoboken's costs, including payments made by Hoboken to Seatrain under certain contracts pursuant to which Seatrain had established its terminal at Hoboken and had agreed to interchange freight with Hoboken by means of Seatrain's special devices which saved Hoboken the burden and expense of providing cars and loading freight into and unloading it from cars, services which the railroads undertook and for which they were paid by shippers in the lighterage-free rates. Since Seatrain had acquired Hoboken's stock after the agreement had been arrived at in principle, Hoboken by its complaint asked the Commission to scrutinize the contracts and determine whether the compensation to be paid to Seatrain thereunder was reasonable *in consideration of the savings in labor and expense and the added traffic produced for Hoboken* by reason of the arrangement and, if not, to determine what would be reasonable compensation consistent with the efficient operation of the Hoboken.

The Commission, after hearing, failed to consider and determine what would be reasonable compensation for Hoboken to pay Seatrain for the *benefits* of the interchange arrangement *to Hoboken*, but dismissed the com-

plaint, excusing its failure and explaining its dismissal on various grounds presently to be considered.

Hoboken then instituted this suit. By its petition (R. 2-57), it alleged that the Commission's decision and order dismissing its complaint were arbitrary and based on errors of law; that the reasons given by the Commission for excluding the payments by Hoboken to Seatrain under the contract from Hoboken's legitimate costs to be reimbursed by the division to be allowed to it by the trunk lines out of the joint through lighterage-free rates, were unsound as a matter of law; that in resting its decision entirely upon its finding as to the location of the point of interchange the Commission erroneously ignored the effect of the arrangement upon the operations of Hoboken in eliminating labor and expense on its part and in bringing it additional traffic; that among other things the Commission erred in rejecting the contracts as evidence of any obligation to make the payments because of Seatrain's ownership of Hoboken's stock, and that, instead, it should have considered and determined whether the payments were reasonable and consistent with the efficient operation of the Hoboken, in view of the benefits and savings derived by Hoboken from the interchange arrangement. Finally it was alleged that the order of the Commission was confiscatory since it had the result of requiring Hoboken to continue to operate for compensation less than its costs. The Court was asked to annul the Commission's order dismissing the complaint and to direct the Commission to reinstate the proceeding, to make findings on the questions referred to it and to render its decision on the basis thereof.

It is important to realize at the outset that, contrary to the assertions in appellants' briefs around which their whole arguments are constructed, Hoboken did not ask the Court below to substitute its judgment for that of the Commission on a matter peculiarly within the Commission's function—the determination of the point of interchange between Hoboken and Seatrain and the extent of the movements covered by the railroad freight

rates. Admittedly on this question the decision of the Commission, if supported by evidence, was final. *Atchison, T. & S. F. Ry.* v. *U. S.*, 295 U. S. 193; *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402. However, on this matter, there was no dispute for the Commission to decide, since the point of interchange was settled by the agreements between Hoboken and Seatrain. What was argued by Hoboken in the lower Court was that the Commission failed to fulfill its duty in the proceeding in not evaluating and determining what would be reasonable compensation for Hoboken to pay Seatrain for the savings in labor which Hoboken enjoyed in performing its rail undertaking on the railroad side of the interchange point, and in not considering the divisions to be received by the trunk lines and Hoboken respectively in the light of the "windfall" which they received as the result of the arrangement with Seatrain.

The Court below upheld these contentions. It did not, we repeat, substitute its judgment for that of the Commission. Instead it sent the proceeding back to the Commission and directed the Commission to consider and render a decision on the matter which the Commission had evaded—the value if any to the Hoboken and its trunk line connections, of the benefits to them from the arrangement with Seatrain and what would be reasonable compensation for the Hoboken to pay to Seatrain therefor, consistently with the efficient and economical management of Hoboken.

B. The Facts

Although the briefs of both the Commission and the railroad appellants (hereafter called trunk lines) contain statements of the facts, it is believed that an understanding of the issues and of the appellee's position will be aided by a brief restatement of the salient features of the case.

1. APPELLEE HOBOKEN

The Hoboken is a short switching railroad, whose line extends along or near the waterfront at Hoboken, New Jersey. It serves numerous steamship piers, industries, and private side tracks, and at its northern end connects with the tracks of the Erie Railroad and through the Erie Railroad indirectly connects with the other trunk line railroads reaching New York Harbor. Freight originating at interior points on the lines of the trunk line railroads or their connections, consigned to industries, side tracks or steamship piers in Hoboken, is moved in cars to the interchange track between the Erie and the Hoboken and is then switched by the Hoboken to the industry, side track or steamship pier to which the freight is destined. Similarly, freight originating at industries in Hoboken or brought to Hoboken by steamships docking at piers served by the Hoboken for shipment to destinations in the interior is loaded into cars placed by the Hoboken, which are then switched by it to its interchange with the Erie Railroad and transported thence over the lines of the appropriate trunk line railroads (R. 109, 157-60, 184-85).

2. FREIGHT RATES IN GENERAL

The freight charges for the transportation of freight between interior points and Hoboken are based on single unit rates, covering the entire transportation between the interior and the point of delivery or loading on Hoboken's line and, with minor exceptions immaterial here, are the same as the freight rates on freight for delivery or originating at all points in the New York Harbor area (R. 110, 176, 183).

3. LIGHTERAGE-FREE OR SHIPSIDE RATES AND THE RAILROADS' OBLIGATIONS THEREUNDER

The freight rates are of two general categories. First, there are so-called shipside or lighterage-free rates, with which alone this proceeding is concerned. Under these

rates, it is the undertaking and obligation of the railroads to deliver freight consigned to or in care of a steamship docking in New York Harbor alongside the vessel within reach of and in such a manner that it is available to the ship's tackle. A railroad may do this by unloading the freight from the car, placing it on a lighter, and moving the lighter alongside the ship or the ship's pier. (It is for this reason that the rates are called "lighterage-free", since no extra charge in addition to the rates is made to shippers for unloading freight from or loading it into cars or for the lighterage movements or handling the rates themselves including the compensation for these operations.) If the vessel is at a pier served directly by a railroad track, the railroad serving the pier completes the obligation under these rates by switching the car to the pier and unloading the freight from the car and moving it to the foot of ship's tackle alongside the ship. Accordingly, when the pier is one served by Hoboken, it switches the car from the Erie interchange to the steamship pier and unloads the freight from the car and places it at the foot of ship's tackle. In the case of freight moving in the reverse direction, that is, brought to New York Harbor by steamship and destined for rail movement to the interior under lighterage-free rates, the railroads' obligation is similar except that the operations are reversed, freight being received by the railroad performing the terminal service at the foot of ship's tackle, either on a lighter moved to ship's side by the railroad or on the pier alongside the ship, and thence being handled to a railroad car and loaded into the railroad car by the railroad or at its expense. Hoboken generally performs these obligations of loading, unloading and handling freight delivered to and received from ships docking at piers served by it, by employing the ship's stevedores and compensating them or the steamship company for their labors (R. 111, 193, 194, 225, 259-266).

4. NON-LIGHTERAGE-FREE RATES

The other category of freight rates consists of what may be called non-shipside rates. Under these rates, the undertaking of the railroads is limited simply to the place-

ment of a car upon a track, where it can be unloaded by the consignee or loaded by the shipper. If a railroad performs the loading or unloading for the shipper or consignee, an extra charge is made therefor (R. 158, 185, 193, 194, 225). These rates or the divisions thereof are not involved in this proceeding (R. 111).

5. HOBOKEN'S DIVISIONS OF THE FREIGHT RATES

When the switching service of Hoboken is employed in connection with freight originating at or consigned to points served by its line it receives its compensation therefor in the form of so-called divisions or proportions of the through unit freight charges. The total freight charges are generally collected by the trunk line railroads and Hoboken's division or proportion thereof is remitted to it by them.

Since 1920, Hoboken has had an agreement with the trunk line railroads providing, so far as is here pertinent, the following basis of divisions to be received by Hoboken on the kinds of freight indicated (R. 159; Exhibit "2", R. 457):

Carloads loaded or unloaded by H. M. R. R. (Hoboken) or at its expense	$1.35 per ton[1]
Carloads loaded or unloaded by shipper or consignee or at their expense	.60 per ton[1]

The difference of 75 cents represents approximately the cost to Hoboken of loading and unloading freight into and from cars for which service the trunk lines are paid by shippers in the lighterage-free rates.[2]

[1] When the through unit freight charges were increased by certain percentages under authority of the Interstate Commerce Commission, Hoboken's divisions were correspondingly increased by the same percentages, the division of $1.35 becoming $1.49 or $1.42 and the division of 60 cents becoming 66 cents or 63 cents. For convenience, however, in the discussion herein the original figures will be used.

[2] Hoboken's contracts with Holland America Line stevedores and others provide payments ranging from 70 to 75 cents per ton as its cost of loading and unloading cars and handling to and from ship's tackle (Exhibits "20", R. 515, "21", R. 519; R. 259-264).

6. SEATRAIN

Prior to 1932, the steamships operating to and from New York Harbor, including Hoboken, with which the railroads interchanged freight, were cargo vessels of the ordinary type, which are commonly referred to in railroad parlance as break-bulk ships, for the reason that in order to deliver to them freight moving to the port by railroad, it is necessary to break the bulk of the car, unload the freight from the car, and place it loose alongside of the ship within reach of ship's tackle.

In 1932, however, a new type of steamship came into the New York Harbor picture. Seatrain, and its predecessor, Over-Seas Railways, had developed a form of ocean-going freighter equipped with railroad tracks for the transportation by water of freight in railroad cars and had acquired rights to use certain special terminal facilities to accomplish the transfer between a railroad serving a pier and its vessels of freight in the cars used for rail movement, thereby eliminating the furnishing of the car itself at the port and the labor incident to loading and unloading cars. This company and its predecessor had been operating between New Orleans and Havana since 1929 and in 1931 began arrangements for the establishment of a service between New York Harbor and New Orleans via Havana with two new ships being constructed for the purpose (R. 211-214, 226-232).

Briefly, Seatrain's vessels are large, fast, cargo-carrying ships of approximately 10,000 tons, with four decks and four lines of track on each deck. When fully loaded each ship can carry 100 cars.* The handling device consists of a large crane or car elevator, constructed on the pier or trestle alongside which the vessel docks. A track extends along the trestle and in this track, opposite the hatch of the vessel, is a well into which fits what is described as a cradle. The "cradle", which will be frequently referred to herein, is, in effect, a short bridge member with a track on it

* One ship has a capacity of 95 cars.

the length of a car. In accomplishing transfer between the railroad and the ship, the cradle is placed in the well, and the car containing the freight is shoved onto the cradle; then the cradle is hoisted by the elevator over the side of the vessel and lowered into the hold until it is level with the deck on which the car is to be carried, where the car is hauled off the cradle by a winch and jacked in place on the ship. There is one cradle for each track on each deck of the vessel and as the loading of each deck is completed, the cradles are left in place flush with the deck, each cradle carrying a car and closing the hatch. In unloading freight from the ship the operation is reversed (R. 34, 110), *Investigation of Seatrain Lines, Inc.*, 195 I. C. C. 215, 219. The ship, cradle, pier and method of operation are shown in the photographs of record (Exhibit "9", R. 462-468).

7. EVENTS PRECEDING THE CONTRACTS BETWEEN HOBOKEN AND SEATRAIN

In 1931 Seatrain began negotiations for the establishment of a service to and from New York Harbor. It first sought a location for a terminal at some point served directly by one or the other of the trunk line railroads. The use by Seatrain of its specially designed ships and its crane and cradle would make possible the interchange of freight in cars and save the railroads the expense and labor of furnishing cars and of loading and unloading freight into and from cars. Since the railroads collected rates from shippers which included compensation to them for these expenses which they would be saved Seatrain considered that they should compensate it for the savings and advantages which they thus secured. Seatrain's first proposal to the trunk lines with whom it originally negotiated for a terminal in New York Harbor was that this savings should be divided equally with the railroads (R. 211-214, 226-232).

Seatrain's president, Mr. Graham M. Brush, called as a witness, testified without contradiction:

"In all these discussions, Seatrain had taken the position with the railroads, upon the establishment of the Seatrain service. In interchanging freight between the rail lines and Seatrain ships, it was a part of Seatrain's invention, and a part of Seatrain's investment in its invention, and constituted a means whereby, in certain instances, materal savings could be made in interchange, and Seatrain was willing to utilize its invention and its investment so as to make those savings, and we felt that those savings should be divided on a fifty fifty basis.

Q. By savings, you mean savings in the expense of interchanging freight between a railroad and a water line?

A. That is correct. In other words, to be more specific, if a water line should invest in certain equipment, either in a terminal or in ships, or a combination of terminal devices, and especially constructed ships, it is possible—in fact, it is very frequently done by the steamship lines—to make savings in this interchange, provide better service for rail and water.

Seatrain had done the same thing, only it had gone a little bit further than many of the other water lines.

Now, the reason we felt that these savings should be divided between the rail and the water line was because we felt that it would be of advantage to both carriers, primarily to Seatrain, to encourage the railroads to work with Seatrain.

It would give them ways and means to help the competition with our route, rail and Seatrain route, versus truck and water route, or barge and water route." (R. 212-213)

Proof was offered before the Commission that a payment by the trunk lines to Seatrain in an amount which would result in dividing the savings in labor and expense to the trunk lines was one of the terms on which negotiations with the trunk lines for a terminal were conducted, and that no exception was taken by them thereto. Over Hoboken's

protest such evidence was excluded by the Commission's Examiner as irrelevant* (R. 212-216).

It was determined, however, that Seatrain should seek a location for its terminal on the line of some neutral railroad. It turned to the Hoboken.

8. NEGOTIATIONS BETWEEN SEATRAIN AND HOBOKEN LEADING TO THE CONTRACTS PROVIDING FOR THE PAYMENTS IN DISPUTE

At that time Hoboken was under entirely separate management and ownership, being controlled by the P. W. Chapman interests (R. 223, 224).

Seatrain took up with the then management of Hoboken the question of locating a terminal on its line. In these negotiations, it took the position that in consideration of the benefits which would accrue to Hoboken, Hoboken should make a contract with Seatrain covering the interchange as it had done with other water lines docking at Hoboken and should make a payment to Seatrain in consideration thereof. It was suggested that the payment, instead of being 70 to 75 cents, which was paid to other steamship lines, should be 40 cents, which would enable the Hoboken to arrange for a division from the trunk lines of only $1.00 instead of $1.35, thereby dividing the labor savings and benefits with the trunk lines. The Hoboken's management agreed to the proposed arrangement (R. 222-228).

After this agreement had been reached, it developed that Hoboken was in a serious financial condition, that its stock was in the hands of trustees for liquidation, that it was without the funds necessary to rearrange its properties to permit the installation of the facilities required for the interchange with Seatrain and, indeed, that its continued operation was doubtful. Under the circum-

* This is significant in view of the fact that when it made its decision one of the reasons given by the Commission for disallowing the payments made by the Hoboken as part of its costs was that there was no proof that any independent railroad had ever agreed to make such payments to Seatrain (R. 48, 116).

stances, Seatrain purchased the outstanding stock of Hoboken from the trustee in liquidation and under an arrangement with Hoboken's landlord, the Hoboken Land and Improvement Company, advanced to Hoboken a considerable sum of money to enable it to make the necessary rearrangements and installations for the handling of freight to be interchanged with Seatrain's vessels (R. 228-231). *Hoboken Mfrs. R. Co. Notes,* 189 I. C. C. 29.

Then there were entered into between Hoboken and Seatrain several contracts, among them: (a) a lease from Hoboken to Seatrain of a pier with supporting tracks and a small locomotive; and (b) a contract in the terms of the agreement already reached with Hoboken's previous management, fixing the point of interchange of freight between Hoboken and Seatrain, determining their respective responsibilities therefor, obligating Seatrain to accept freight when delivered to it in cars on the cradle of its car elevator alongside its ship and relieve Hoboken of the necessity of unloading freight from cars and, similarly, to deliver freight for movement by Hoboken in railroad cars on its cradle, relieving Hoboken of the necessity of furnishing a car for rail movement and loading the freight into a car, and providing that in consideration of Seatrain's undertaking and the benefits received by Hoboken it should pay Seatrain 40 cents per ton on all freight so interchanged (R. 231-233, Exhibits "10", R. 469; "11", R. 50). There was also a third contract, not in evidence in this proceeding but described by the Commission in its report in *Investigation of Seatrain Lines, Inc.*, 195 I. C. C. 215, 219, which the Commission by reference incorporated in its decision here as its description of the method of interchanging freight with Seatrain (R. 37). As to this third contract the Commission found in the proceeding referred to (p. 225):

> "Seatrain has a contract with the Hoboken covering the interchange and supply of freight cars and the payment by Seatrain for the use of the cars, for insurance, and for settlement of loss and damage

claims. This agreement also provides for the return by Seatrain of empty cars."

Later, in view of the attitude of the railroads and the further fact that freight interchanged with Seatrain proved to be of somewhat different character than had originally been contemplated, a new contract was substituted for the old one, providing that instead of a payment of 40 cents a ton on all freight Hoboken should pay Seatrain 73 cents a ton but only in the case of freight moving under lighterage-free rates, pursuant to which Hoboken was obligated to assume the expense of loading and unloading freight from cars and interchanging with steamships at the foot of ship's tackle (R. 257-266; Exhibit "19", R. 53).

9. CONTROVERSY BETWEEN HOBOKEN AND THE TRUNK LINES

The old agreement of 1920 between Hoboken and its trunk line connections fixing the basis of divisions of through rates to be received by it, is not applicable to freight interchanged by Hoboken in railroad cars with the vessels of Seatrain for the reason that this old agreement fixed Hoboken's divisions only on freight loaded or unloaded to or from cars either by Hoboken or at its expense or by the shipper or consignee, whereas freight interchanged with Seatrain in cars is obviously not loaded or unloaded at all. In the absence, therefore, of any prior agreement with its trunk line connections, Hoboken sought an agreement with them as to the basis of dividing the through freight charges on freight interchanged with Seatrain. In the light of the fact that the original agreement between Hoboken and Seatrain previously referred to fixed the amount of the payment to Seatrain at 40 cents per ton instead of from 70 to 75 cents paid by Hoboken to other steamship lines or their stevedores, Hoboken proposed to the trunk lines that its division or proportion of the through charges on Seatrain freight should be $1.00 per ton instead of $1.35 per ton, Hoboken's

usual division on freight interchanged with steamships, thereby splitting with them the advantages of the savings made possible by the elimination of loading or unloading through the use of Seatrain's devices. Later, when the contract between Hoboken and Seatrain was changed, as previously described, to provide payment to Seatrain of 73 cents per ton only on freight moving under lighterage-free or shipside rates and no payment at all on freight moving under non-shipside rates (involving no obligation on the part of the railroad beyond placement of the car for the shipper to load or unload), Hoboken similarly changed its claim regarding its divisions, contending that it should receive a division of $1.35 out of lighterage-free or shipside rates but would agree to accept a division of only 60 cents on freight moving under non-shipside rates. The trunk lines, however, refused to agree with Hoboken on either basis sought by it and insisted on paying to it as its division on all freight interchanged with Seatrain only 60 cents a ton, representing only the Hoboken's switching expense, and on keeping for themselves the entire savings in labor costs resulting from Hoboken's arrangement with Seatrain and its method of interchange (R. 231-279; Exhibit "24", R. 523, 524).

Hoboken then filed its complaint with the Interstate Commerce Commission, asking the Commission under the provisions of the Interstate Commerce Act to determine and prescribe the just, reasonable and equitable divisions to be received by it out of the joint through lighterage-free rates for its portion of the transportation service involved in connection with freight interchanged with Seatrain (R. 22-32).

C. The Commission's Decision

1. THE MAJORITY DECISION

The Commission after holding hearings, receiving briefs and hearing argument entered an order dismissing the complaint, basing that order upon the decision contained

in its report (R. 32-50). It is this order denying Hoboken any relief which is the subject of this suit.

The Commission decided, in the first place, that Hoboken as a switching line was entitled to receive as its division of the joint through rates involved its full costs of its transportation service in handling the traffic concerned together with a fair return upon its property used therefor (R. 46). With this decision of principle we have no quarrel and it is only in the Commission's application of the principle and the result thereof that we allege that it erred.

The Commission then determined, however, that the only items of Hoboken's expenses to be considered as its costs of handling this freight interchanged with Seatrain were its costs of the switching operations alone. On the basis of this determination it decided that the division of 60 cents satisfied the principle just stated. In reaching this decision the Commission concluded that neither the payments made to Seatrain under the contract, nor any part thereof, constituted a part of Hoboken's "full costs" of handling the freight interchanged with Seatrain, although these payments were required by the contract between Hoboken and Seatrain defining their respective undertakings and obligations, and although it was only pursuant to this contract that Seatrain received and delivered the freight on its cradle in cars, saving Hoboken the operations of loading and unloading, furnishing cars, etc.

The Commission rested its conclusion that the payments under the contract with Seatrain should not be included in Hoboken's costs for which it is entitled to be reimbursed, upon three grounds, each of which, as we submit, was both erroneous in law and without support in the evidence. It held, first, that the payments are not made for anything which is a part of Hoboken's transportation service. Then it decided that while the contract payments, even though not for the performance of part of Hoboken's transportation service, might properly be included in Hoboken's costs for the purpose of determining its divisions if Hoboken could not secure the bene-

fit of the arrangement with Seatrain without the contract payments, nevertheless it did not regard the payments as "necessary" to secure the savings and benefits from the interchange. The Commission gave three reasons for this view that the payments were not "necessary" and that the contract could be disregarded: (a) that Seatrain owned Hoboken's stock; (b) that the record did not show that "such payments" had been "exacted or obtained by Seatrain from an independent rail connection"; and (c) that it could be assumed that Seatrain had other reasons than the payments for being willing to continue the interchange arrangement (R. 48, 49). We submit that these reasons are all invalid.

2. THE DISSENTING OPINION OF COMMISSIONER SPLAWN

Commissioner Splawn dissented from the view of the majority that the payments made to Seatrain covered no part of Hoboken's transportation service under the lighterage-free rates, saying (R. 49-50):

> "I take it that the thought here is that such payments cannot be identified as an element of the cost of performing complainant's service. With this I cannot agree.
>
> The facilities employed in the handling of traffic which complainant interchanges between Seatrain and defendants and necessary to the performance of that *transportation service* are available for that purpose only because of Seatrain's exclusive property right in the patented method of handling the traffic. The service performed by *that method* not only *relieves the rail carriers of loading and unloading expense* but *affords other advantages to them* as well as Seatrain, as is *evidenced by the large volume of traffic interchanged* by this means. It admittedly is a *service of substantial value to defendants*, and the method which complainant uses to effect the interchange is likewise of value to it. It is inconceivable that such values can be created without effort and some element of expense.

For such effort and expense *Seatrain is entitled to appropriate compensation.* This the majority refuse to recognize and in effect divert to defendants the economies achieved by Seatrain, thus indirectly depriving the latter of its property." (Italics ours.)

3. ILLUSTRATION OF THE EFFECT OF THE COMMISSION'S DECISION

The situation resulting from the Commission's decision can be illustrated, as it was by the Court below, by assuming a lighterage-free rate of $7 per ton from Buffalo to New York via the Erie Railroad. If the freight is to be delivered to a ship docking at an Erie Railroad pier, the Erie will spot the car, unload the freight and transfer it from the car to the side of the ship or will pay the steamship company or its stevedores for doing so (R. 176, 177, 419), the $7 rate including compensation to it for the expense of these operations. If the freight is to be delivered to a ship somewhere else in the harbor to which it must be moved by lighter, the Erie will unload the freight from the car to a lighter and tow the lighter to shipside at an average expense of from $1.419 to $1.69 per ton (Exhibit "14", R. 482) leaving a net to it of from $5.31 to $5.58. If the freight is to be delivered to a Pan-Atlantic Steamship Co. vessel docking at a pier served by the Hoboken, the Erie will turn the car over to the Hoboken to switch to the pier, the Hoboken will then unload the freight from the car and transfer it to ship's side (generally employing the steamship's stevedores for the purpose and paying them 70 to 75 cents (Exhibit "20", R. 515, 518), and the Erie will pay the Hoboken a division of $1.35 (60 cents for switching and 75 cents to reimburse it for its unloading and handling cost (R. 135). The Erie railroad revenue would thus be $5.65. However, if the freight is to be delivered to Seatrain, the Erie, under the Commission's decision, will pay Hoboken a division of only 60 cents to cover nothing but the switching of the car and the Erie will be allowed to keep $6.40 per ton, although its rail service will be precisely the same as that for the

freight delivered to the Pan-Atlantic vessel for which it voluntarily accepts net revenue of only $5.65. Hoboken will either not be able to make any payment to Seatrain under the contract pursuant to which delivery on the cradle was made possible, or, if it makes a payment, its costs will exceed the revenue allowed to it. The Commission reached the conclusion, having this result without considering whether the contract payments were reasonable and, if not, what payments would be reasonable and consistent with the efficient and economical operation of Hoboken in consideration of the benefits to it from the interchange arrangement in labor saving and added traffic. And without going into this very pertinent question, the Commission's decision would allow the entire saving in labor expense and benefit to be kept by the Erie which did nothing to bring them about with no benefit to the shipper, Hoboken or Seatrain. The money paid by the shipper to cover the unloading expense would be in the wrong person's pocket.

Bearing in mind that this proceeding relates only to lighterage-free rates charged to shippers for railroad transportation to and from the port,* the situation under the Commission's decision would be that the railroads would

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* There is not involved the division of joint through rates for rail and water transportation to which Seatrain is a party. On freight interchanged with Seatrain moving under lighterage-free rates, to whose division between Hoboken and its trunk line connections the proceeding relates, Seatrain charges separate rates for its water transportation. It is true, as stated in the brief of railroad appellants (pp. 10-11), that when the complaint was filed there were a few joint through rates for rail and water transportation maintained jointly by Seatrain and the railroads and these were referred to in Hoboken's complaint to the Commission. However, the Commission did not attempt to deal with the division of these rates, confining itself, as its report clearly shows, to the lighterage-free rates. Since the Hoboken's complaint to the Commission was filed, the Commission in *Seatrain Lines, Inc.* v. *Akron, C. & Y. Ry. Co.*, 226 I. C. C. 7 (1938), 243 I. C. C. 199 (1940) has prescribed many joint through rates for through rail and water transportation in connection with the various rail lines and Seatrain. In another proceeding, *Seatrain Lines, Inc.* v. *Akron, Canton & Youngstown Ry. Co.*, I. C. C. Docket No. 28668, which is pending before the Commission, there is involved the question how these

complete their undertaking of accomplishing interchange with a water carrier with less labor and at less expense than the shipper paid for. The Commission's brief in this Court contains various suggestions that since Seatrain has devoted its facilities to the public service it is the shippers who are entitled to any savings in labor and expense made possible thereby. The Commission's decision, however, would not transfer these savings to shippers; they would simply be pocketed by the trunk line railroads, who have contributed nothing to make the savings possible. If the lighterage-free rates charged by the trunk lines to shippers were reduced in an amount reflecting the savings in labor and expense, there would be a basis for the argument of the Commission here, but in its report the Commission indirectly ruled that this should not be done because the rates are group rates. Assuming this latter fact, the only way in which the savings in the labor required of the railroads to complete their undertaking could be transferred to shippers would be for the railroads to compensate Seatrain for accomplishing these savings, in which event it might be argued that Seatrain's charges for its water transportation should reflect the benefits of the payments to it. Under the Commission's decision, however, neither

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joint through rates should be divided between Seatrain on the one hand and the railroads, including both Hoboken and the trunk line railroads, on the other hand. The determination in this latter proceeding will not, however, dispose of the issues in the present suit before this Court for two reasons: first, the new proceeding before the Commission involves only the division as between Seatrain on the one hand and the railroads on the other and does not involve the question as to how the railroad portion of the rates should be divided between Hoboken and the trunk line railroads; and, in the second place, that proceeding relates only to rates on a portion of the interstate traffic involved, whereas there is a greater volume of freight interchanged with Seatrain which is transported to and from Cuba, where the charges for rail and water transportation, respectively, are necessarily separately maintained and where the lighterage-free rates are charged for the rail transportation to and from Hoboken. There also remains a considerable volume of interstate freight which normally moves under so-called combinations of separately published rates rather than joint through rates. This was explained to the Court below (R. 73-77).

Seatrain, whose enterprise and facilities brought about the labor saving for the railroads, nor Hoboken, which entered into the arrangement with Seatrain, nor the shippers would receive the benefit of the savings, which would all be retained by the trunk lines, who contributed nothing thereto and who perform no greater service in connection with Seatrain freight than in connection with freight interchanged by Hoboken with break-bulk water carriers, where the trunk lines allow Hoboken a division of $1.35.

D. The Action in the Court Below

Following the denial by the Commission of a petition for reconsideration and for further hearing (R. 5), the Hoboken, on August 27, 1940, instituted its suit in the Court below to set aside and annul the decision and order of the Commission dismissing its complaint. By its petition it sought an order of the Court directing the Commission to reinstate the proceedings before it, and to consider and make a determination as to the value (if any) of the savings and benefits to Hoboken from the interchange arrangement, to determine what would be reasonable compensation to be paid by Hoboken to Seatrain therefor (if it concluded that the payments provided by the contract were not reasonable and consistent with efficient and economical operations), and to determine the divisions of the lighterage-free rates to be paid to Hoboken by its trunk line connections on the basis of including such reasonable payments in Hoboken's costs.

Its petition alleged that the Commission's decision and order were erroneous as a matter of law in various respects and were arbitrary and in disregard of the evidence and that the Commission erroneously failed to consider and make a determination and findings on essential questions within its jurisdiction.

E. The Decision of the Court Below

The specially constituted District Court after twice hearing argument and considering the record before the Commission which was offered in evidence handed down

its opinion and entered its findings of fact, conclusions of law and decree.

(a) In its opinion it first decided:

"The question of where transportation by rail ends is an administrative question. * * * The finding by the Commission that rail transportation ends at the cradle when Hoboken has put the car consigned for Seatrain upon it and begins at the cradle when the movement is reversed is fully supported by the evidence (citing the contract between Hoboken and Seatrain). * * * The Commission, therefore, held that the payments by Hoboken to Seatrain do not constitute a legitimate transportation cost. Upon this finding, supported by evidence, its judgment is final." (R. 115, 116)

* * * * *

"However, the issue at bar is not predicated solely upon Hoboken's legitimate costs. The entire inquiry should be directed to securing 'a fair and equitable division' of the rates. Conceding *arguendo* that the contract between Hoboken and Seatrain does not constitute a valid obligation to be considered in determining Hoboken's costs, that does not necessarily mean that there is no obligation upon Hoboken to make some payment for the interconnection which saves Hoboken the labor and costs of loading and unloading freight. The Commission should have determined the *quantum meruit* of the relationship. It is possible that there was no service or relationship of value. Even such a finding would not necessarily result in a dismissal of the complaint. If there is a windfall in the case at bar by reason of Hoboken's right under its contract to use the Seatrain devices to fulfill its obligations of carriage, the Commission should determine that fact and also an equitable basis for division of the windfall between Hoboken and the trunk line carriers. This the Commission has failed to do by appropriate findings." (R. 117)

* * * * *

"If the Commission should find that the Seatrain devices are an efficient aid to railroad transportation, the Commission should evaluate the worth of the devices to Hoboken and a legitimate payment therefor; in short, including in the base upon which Hoboken's fair return is calculated, the true value of the Seatrain devices. In effect, the Commission, as a representative of the public interest and the public would set the value of the contract and the Seatrain devices to Hoboken. It should likewise determine a division of the through rate which would not be unduly prejudicial or preferential to any of the parties." (R. 118-119)

(b) The lower Court further held that the Commission had not made necessary findings, saying:

"The act directs the Commission to inquire into the facts and to prescribe just and equitable divisions and not unjustly to prefer or prejudice any party. There was no evidence presented to show that the granting of the entire saving of the loading or unloading of the cars was not an undue emolument for the trunk line railroads. The Commission's remark that the defendant's rates were based on average costs scarcely constitutes a finding as prescribed by the Act. The Commission merely stated in conclusion that such divisions are not unduly preferential. Where there is a lack of basic findings, the court need not examine the evidence and spell out conclusions of fact, Florida *v.* United States, 282 U. S. 194, 215. Likewise, where the evidence does not support the findings, the holding of the Commission should not be sustained. Colorado *v.* United States, 271 U. S. 153; New England Divisions Case, 261 U. S. 184, 204. Our holding on this point obviates the necessity for inquiring into the due process issue raised by the plaintiff." (R. 118)

(c) And it ended its opinion with the holding:

"The Order of the Commission of July 24, 1939 will be set aside and the Commission is directed to reinstate

the proceedings before it and to make findings of fact as indicated by this opinion and to issue and enter a report in the proceedings and to make such an order or orders therein as may be required by law." (R. 119)

(d) In its conclusions of law, it said:

"3. The Commission erred as a matter of law in not making a finding as to whether or not reasonable payment to Seatrain for the benefits derived by Hoboken and through Hoboken by the trunk lines from the interchange with Seatrain and the use by Seatrain of its patented devices in connection therewith, is part of Hoboken's costs of operation under efficient operation in the transfer of freight between the trunk lines and Seatrain, when on such freight the trunk lines charge their lighterage-free or shipside rates, and have the obligations and undertakings for which they are compensated by such rates.

"4. The Commission erred as a matter of law and failed to carry out the duty imposed upon it by the statute, to give due consideration 'to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property' in that the Commission failed to consider and make a finding as to whether relationship between Hoboken and Seatrain was in the interest of the efficient operation of Hoboken as a rail carrier, and failed to consider and make a finding as to what payment by Hoboken to Seatrain would be reasonable compensation, consistent with such efficient operation, for the benefits derived by Hoboken and the trunk lines from the interchange arrangement with Seatrain, to be included in Hoboken's costs for which it is entitled to be reimbursed by the divisions paid to Hoboken by the trunk lines.

"5. The Commission erred as a matter of law and failed to carry out the duty imposed by the statute of

determining whether or not the divisions were unjust, unreasonable, inequitable or 'unduly preferential or prejudicial as between the carriers * * *' in that the Commission failed to direct its attention to the problem of the equitable division of the 75¢ saving occasioned by the interconnection with Seatrain.

"6. The order of the Commission dismissing Hoboken's complaint should be set aside and annulled and the Commission should be directed (a) to reconsider the decision; (b) to determine whether or not the relationship between Hoboken and Seatrain is of value; (c) if the Commission should find that the relationship is of value, to determine the amount of that value to be allowed in establishing Hoboken's legitimate costs; (d) to make a finding as to whether or not the allowance to the trunk line carriers of the entire saving of 75¢ per ton occasioned by the use of the Seatrain interconnection is 'unduly preferential or prejudicial as between the carriers'; and (e) if the Commission should find that the allowance of the entire 75¢ to the trunk line carriers is unduly preferential or prejudicial, to determine an equitable division of the 75¢." (R. 125-127)

(e) Its decree ordered:

"that the Interstate Commerce Commission reinstate the proceedings before it, reconsider its decision, make findings of fact as indicated in the opinion of this Court dated November 24, 1942, make conclusions of law, and issue and enter a report in the proceedings and make such order or orders as may be required by law." (R. 128)

F. Later Developments.

We believe that this Court should be informed of two developments which do not now appear from the record before it.

1. THE EFFECT OF THE WAR ON SEATRAIN'S OPERATIONS.

As stated in the Commission's brief (p. 55), the vessels of Seatrain were diverted, at the direction of the government or by requisition, to other services, and since about February 1, 1942 have not been operating to and from Hoboken. The crane, also, has been transferred to Florida to be used in connection with the operation of one of the vessels between Florida and Cuba at government direction. Hence, at the present time there is no Seatrain traffic moving to and from Hoboken. The Court will doubtless take note of the fact that break-bulk ships formerly operating in the coastwise trade have also been requisitioned or diverted to war uses.

We agree with counsel for the Commission that this does not render the case moot, since the rates are on file with the Commission, the divisional basis complained of stands, and these will be operative again if and when Seatrain's vessels return to their former service and Seatrain re-establishes its terminal and terminal facilities at Hoboken. All parties desire a final determination of the issues.

2. THE BANKRUPTCY OF THE HOBOKEN.

On July 26, 1943 a petition for reorganization under Section 77 of the Bankruptcy Act (U. S. C. Title 11, Section 205), was filed by the Hoboken in the United States District Court for the District of New Jersey and was approved by that Court. A trustee has recently been designated by the Court, but at the time this brief is written, his appointment has not been approved by the Interstate Commerce Commission so that he has not yet entered into possession and taken over the operation of the Hoboken. At the present time the Hoboken is being operated by the owning corporation for and under the orders and direction of the Court, by whose direction, also, this brief is filed.

Whether, as a result of the reorganization, Seatrain will continue to own the stock of the company operating

Hoboken's properties only the future can tell. Until the reorganization is accomplished, or the proceeding dismissed, whatever control Seatrain had of the Hoboken is ended, and it will be the concern of the District Court and of its trustee what terms and conditions can be offered to and arranged with Seatrain to re-establish its terminal at Hoboken when its vessels are once more available to it. This Commission's decision as it now stands or as it should be modified will control those terms.

Summary of Argument

The lighterage-free rates include compensation to the railroads for the expense of loading freight into and unloading it from railroad cars in making interchange with a water carrier. Under contracts between Hoboken and Seatrain, the latter has established its New York terminal at a pier served by the Hoboken and in consideration of certain payments by Hoboken to it has agreed to interchange freight with Hoboken in cars on its cradle, this method of interchange being made possible through the use of Seatrain's special facilities. By this means Hoboken is saved from the labor and expense of loading and unloading freight and has secured a large volume of new traffic. The Commission has ruled, however, that the payments by Hoboken to Seatrain under the contract are not a part of Hoboken's costs of railroad transportation for which it should be reimbursed by its divisions of the lighterage-free rates. The Commission reached its conclusion without considering and making a finding as to whether the payments are reasonable and consistent with the efficient and economical operation of Hoboken in consideration of the savings and benefits obtained by it. As a result of that ruling, the trunk lines, having collected lighterage-free rates from shippers, would keep the entire benefit of the savings resulting from not having to load and unload cars. Neither the shippers, Hoboken nor Seatrain would receive any benefit. This conclusion cannot be right. The Court below correctly directed the Commission to re-open the proceeding for reconsidera-

tion and to make such findings on the questions which the Commission disregarded. In so doing, the lower Court did not substitute its judgment for that of the Commission as to a matter peculiarly within the latter's field, but instead directed the Commission to exercise its functions under the Act.

POINT I. The appellants' arguments that the Court below erred in sending the proceeding back to the Commission for reconsideration and further findings rest upon unsound premises.

A. The major premise on which appellants' arguments rest is that the determination by the Commission of the point of physical interchange settled the question whether the payments were made for something related to Hoboken's transportation service as a railroad and that since the determination of the interchange point was a matter peculiarly within the function of the Commission, its decision was conclusive. This premise is erroneous. There is no dispute as to the point of interchange, which is fixed by agreement between the Hoboken and Seatrain. Payments are not made by Hoboken for a part of Seatrain's operations as a water carrier but in consideration of the benefits derived by Hoboken itself in enabling it to complete its railroad obligation of interchanging freight with a water carrier without the labor and expense of loading, unloading and handling the freight and furnishing cars and in consideration of the added traffic secured by Hoboken from having Seatrain establish its New York Harbor terminal at a pier served by it.

B. Appellants' assumption that the payments to Seatrain are to reimburse it for its expenses of loading and unloading its vessels as a part of its service as a water carrier is incorrect because it disregards the fact that Seatrain's facilities and method of interchange accomplish two purposes: they facilitate

transferring cargo between Seatrain's vessels and the pier, a steamship operation, and they also save the labor and expense of loading freight into and unloading it from cars, a railroad operation. It is the latter for which payment is made by Hoboken.

The effect of the Commission's decision is that the trunk line railroads who collect from shippers lighterage-free rates, including compensation to them for the expense of loading and unloading cars, will be permitted to retain the same divisions as if such expense had actually been incurred by them, whereas Hoboken and Seatrain, whose arrangement and facilities eliminates the necessity of such expense, will receive no compensation or benefit therefrom.

C. The lower Court by accepting as final the Commission's determination that the cradle constituted the point of interchange was not precluded from deciding that the Commission erred in excluding any payment by Hoboken to Seatrain from Hoboken's costs of completing its railroad obligation or from sending the proceeding back to the Commission with instructions to consider and determine the reasonable payment to be paid by Hoboken and included in its costs, consistent with its efficient management and operation, in consideration of the benefits and savings in labor and expense accruing to it from the interchange arrangement.

D. The briefs of appellants contain various statements which are either incorrect or not germane and tend to confuse the issues. The argument that the Commission decided that the division of 60 cents was adequate and covered Hoboken's full cost ignores the fact that the Commission itself recognized that the division of 60 cents covers only Hoboken's cost of switching alone and is inadequate to cover Hoboken's costs if any payment to Seatrain is properly included therein.

Further arguments contained in appellants' briefs comparing Hoboken's revenues with those of the trunk

lines are beside the point and are misleading. They fail to explain on what theory the trunk line railroads who perform exactly the same service on freight delivered to Hoboken for interchange with Seatrain as on freight delivered to it for interchange with a break-bulk water carrier can properly pay Hoboken 75 cents less and retain for themselves 75 cents per ton more on the former traffic than on the latter out of the same rates. They also fail to tell the Court, as the record shows, that after paying Hoboken the divisions which it claims on Seatrain traffic, the revenues of the trunk lines per car mile will still be greater than their average revenues on other freight transported by them.

POINT II. The Commission failed to do what was required of it when it dismissed the Hoboken's complaint without considering and making a determination as to the value to Hoboken and its trunk line connections of the interchange arrangement with Seatrain and what would be reasonable compensation therefor consistent with the efficient and economical operation of the Hoboken, to be included in Hoboken's costs and to be reimbursed by it by the divisions to be paid to it by the trunk lines out of the lighterage-free rates. The reasons given by the Commission for its decision did not justify its non-action. The Court below correctly sent the proceeding back to the Commission.

A. In assuming that its determination of the point of physical interchange settled the issues before it and excused it from valuing and determining the reasonable compensation to be paid by Hoboken for the benefits and savings to it resulting from the interchange arrangement, the Commission erred in disregarding the fact that it is only by virtue of the contracts with Seatrain under which payments were called for that Hoboken is enabled to complete its undertaking to receive and deliver freight on the cradle without loading freight into or unloading it from cars. The interchange of freight in cars without loading

or unloading involves not only the use of the cradle as the point of interchange, to which Seatrain agreed only pursuant to the contract providing for payments to it, but also involves numerous liabilities and responsibilities for the cars and other matters which require agreement between Hoboken and Seatrain. Hence, it could not properly be said that without such agreements, including the agreement for payment, interchange could be accomplished without Hoboken's having to load or unload the freight into or from the car. Whether the contract payments are excessive and improvident or are consistent with the economical operation of Hoboken was a matter which the Commission should have considered and decided.

B. The Commission erred in excluding the payments from Hoboken's costs on the ground that the contract providing for the payments was between a subsidiary and parent corporation and therefore (as the Commission erroneously assumed) could not be regarded as having any binding effect. Instead the Commission should have treated the contract as binding and as imposing costs upon Hoboken unless there was evidence (which there was not) that the contract was entered into fraudulently or that the payments provided in the contract were excessive or improvident. The Commission should have made a finding on this latter question and the Court below correctly returned the proceeding to the Commission for such a finding.

C. The Commission erroneously assumed that Seatrain had not secured an agreement for compensation for the benefits provided by its method of interchange from any independent railroad and that therefore it was not necessary for Hoboken to agree to such payments in order to secure these benefits.

D. In excluding any payment to Seatrain from Hoboken's cost on the ground that the payments were

not necessary, the Commission not only assumed arbitrarily and without any evidence in the record that Seatrain, for reasons of its own and without compensation would *give* all the benefits of its interchange arrangement and the savings in labor and expense to the Hoboken and its trunk line connections, but also erroneously substituted its judgment for that of Hoboken's management as to the necessity for the contract and the payments in order to secure the benefits of the arrangement.

POINT III. The decision and order of the Commission, in determining the divisions to be received by Hoboken in an amount less than its full cost, would take its property for public use without just compensation, in violation of the Fifth Amendment.

The effect of the Commission's decision is to require Hoboken to continue to handle freight for its trunk line connections to and from Seatrain's vessels for a division of only 60 cents per ton, which is less than its cost of performing the service provided some payment to Seatrain is properly included in such costs.

POINT IV. The decision of the Commission if permitted to stand would be contrary to the public interest and to the declared policy of Congress in regard to the administration of the Interstate Commerce Act, since it would be a precedent discouraging improvements in the art of transportation if those developing such improvements could be compelled to give to others without compensation the entire benefits which the improvements produce.

CONCLUSION. The decision of the specially constituted District Court should be affirmed.

Argument

The Commission, following principles of recognized application in determining divisions of joint through rates under Sections 1(4) and 15(6) of the Interstate Commerce Act, said (R. 47):

> "we agree that, in determining the divisions which a short-line railroad should receive out of joint rates with trunk line connections for switching service * * * the full cost of the service, including a fair return, should be the test * * *."

If the payments provided in the contract with Seatrain (or any payments to Seatrain for the benefits derived by Hoboken from the interchange arrangement) are part of Hoboken's "full cost" of its service under the lighterage-free rates, then the division of 60 cents which the trunk line railroads have allowed to it, and which the Commission, by its dismissal of Hoboken's complaint, has permitted to stand is less than Hoboken's "full costs", and the decision of the Commission has done violence to the controlling principle thus stated by it. Its effect is either to require Hoboken to transport Seatrain freight for revenue less than its expense, or compel it to break its agreement with Seatrain and withhold the payments to it in consideration of which Seatrain has agreed to the interchange arrangement.

The Court below decided that the Commission erred in excluding the payments to Seatrain from Hoboken's "full cost", and in thereby deciding that the division of 60 cents is remunerative and reasonable, without having considered and made a finding as to whether the payments are reasonable and consistent with the efficient and economical operation of the Hoboken as consideration for the savings and benefits accruing to Hoboken and its trunk line connections from the interchange arrangement with Seatrain and if not, what amount (if any) it would be reasonable and proper for Hoboken to pay for these savings and benefits.

We shall first examine the arguments advanced by appellants in their briefs in support of their claim that the Court below was in error in setting aside the decision and sending the proceeding back to the Commission for consideration and findings on the points referred to and for reconsideration of its conclusion in the light thereof. And we shall then consider more fully the decision of the Commission itself and the defects therein.

POINT I

The appellants' arguments that the Court below erred in sending the proceeding back to the Commission for reconsideration and further findings rest upon unsound premises.

With all respect, it is submitted that the arguments in the briefs of the appellants proceed from premises or assumptions which are entirely erroneous. In large part these are repetitions of similar errors into which the Commission fell when it failed to consider the matters and make the findings for which the Court below has directed that the case be remanded to it.

A. **The major premise upon which the arguments in the briefs of both appellants rest, that the Commission's determination of the point of interchange was final, settled everything and excused the Commission from considering the reasonableness of the payments to Seatrain, is unsound.**

The argument in both briefs of appellants is, in effect, that the Commission settled everything when it determined that the service of Hoboken for itself and its trunk line connections under the lighterage-free rates begins and ends when freight is received by Hoboken or delivered by it in cars on Seatrain's cradle. From this it is argued that since the determination of the extent of a railroad's service covered by its rates is a matter peculiarly within the

function of the Commission as to which its decision will not be disturbed by the courts, consequently the Court below could not consistently accept the Commission's determination on this point and yet set aside the Commission's order and send the case back to the Commission to consider and make further findings.

However, if the only question were the point of interchange of freight between Hoboken and Seatrain, there would have been no proceeding before the Commission, because on this question, there was no controversy. Hoboken and Seatrain, by agreement themselves fixed the point of interchange as Seatrain's cradle, as the Court below found (R. 116), and the Commission merely adopted what they had agreed to—and based its determination upon, and to that extent gave effect to the agreement. Moreover, we do not dispute the proposition that if there had been a controversy as to the point of interchange of freight in railroad cars and the extent of the railroad service which a shipper could demand under the lighterage-free rates, the Commission's determination of the controversy would have been final if supported by evidence, *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402; *United States* v. *Pan American Petroleum Corp.*, 304 U. S. 156.

But the determination of the point of interchange did *not* settle the matters as to which the Hoboken sought findings and relief from the Commission. Or at least it did not settle them, unless certain essential facts may be ignored.

The facts which exist and which the appellants in their arguments seek to ignore, as did the Commission, are: (1) that the cradle is available as a point of interchange and that freight may be interchanged in cars there, relieving Hoboken of the labor and expense of furnishing cars, of loading freight into and of unloading it from cars and of handling between shipside and cars only because Seatrain, pursuant to the contract, has so agreed; (2) that in the fulfillment of its obligation to perform the railroad operations necessary to receive from or accomplish delivery of freight to a ship, the Hoboken by virtue of the arrangements with Seatrain receives bene-

fits in that by being able to receive and deliver in cars on the cradle, it can complete its railroad obligation without incurring the labor costs for loading, unloading and handling which it would otherwise have and for which the shippers pay when they pay the trunk lines their lighterage-free rates; (3) that the Hoboken receives still further benefits in the additional traffic which it has secured from having Seatrain locate its New York Harbor terminal at a pier served by it and agreeing with it on a non-break-bulk method of interchange, which added traffic the Hoboken sorely needed;* (4) that part of the consideration for the payments to be made by Hoboken to Seatrain under the contract was these benefits to Hoboken which are certainly directly related to its railroad operations.

It is only by ignoring these substantial consequences for Hoboken in its railroad operations, by looking narrowly only at the movement of the cars as they are taken by the locomotive from or to the cradle and by forgetting that it is solely by reason of the interchange arrangements, including the contracts (Exhibits 11 and 19), that the movement of the cars fulfills the Hoboken's obligation to shippers that an argument is made that the decision that the cradle is the interchange point settles everything.

B. The appellants' assumption that the payments to Seatrain are made to reimburse it for its expenses of a vessel operation and not in consideration of the benefits to Hoboken and the trunk lines in their railroad operations is incorrect.

Not only do the appellants' arguments involve ignoring facts which do exist; they are likewise premised on the assumption, as a fact, of something which is not so. Throughout both briefs it is assumed, stated and reiter-

* The evidence showed that in 1936 freight interchanged by Hoboken with Seatrain amounted to 9670 cars, as compared with only 5291 cars of other freight handled by it. In 1937 the Seatrain interchange provided Hoboken with 9633 cars of freight while its other business totaled only 6166 cars (Exhibit "46", R. 606).

ated that the payments to Seatrain are to reimburse it for its own expense of loading and unloading its vessels. It is asserted that therefore the payments are for a ship operation and are not related to a railroad operation so as to be a proper part of the Hoboken's costs of its railroad service.

Obviously the crane and cradle are used by Seatrain in loading and unloading its vessels. They correspond, as has been agreed by the Hoboken from the beginning, to the booms and tackle of break-bulk vessels, and the contract so indicates. Admittedly also, the method of interchange which these facilities and their use make possible has advantages for Seatrain as a water carrier. But to say that for these reasons the payments are made as compensation only for a ship operation and not for anything which affects the Hoboken's operations as a railroad, is both to ignore completely the terms of the contracts and to disregard the benefits to the Hoboken from the added traffic it obtained and from the elimination of the loading and unloading of cars which admittedly is necessary without the facilities of Seatrain. There can be no question that the payments are to be made, not to reimburse Seatrain for loading and discharging its vessels, but in consideration of the "benefit" accruing to the Hoboken and its trunk line connections. This is clear from the contracts and the uncontradicted oral testimony (Exhibits "11", R. 50, "19", R. 53; R. 212, 213, 224-232) as the Commission itself recognized.

What the appellants fail to appreciate is that Seatrain's terminal facilities achieve a double purpose, accomplishing benefits for *both* ship and railroad. They simplify and expedite the steamship operation of loading and discharging Seatrain's vessels, but they also produce a saving in labor and other benefits for the railroad—and it is for these latter that Hoboken agreed to pay. A fanciful example may serve to illustrate the fallacy of the appellants' assumption.

Suppose there are two railroads, X running from A to B with a gauge of five feet and Y running from B to C

with a gauge of six feet. In handling through freight, it is obviously necessary for the X railroad to unload freight from its cars and place it at a designated point between the ends of their respective tracks and then for the Y railroad to provide cars to fit its rails and reload the freight from the platform to these cars. The X railroad then invents or, by paying royalties, procures patent rights to a type of car with adjustable axles which can be lengthened or shortened so that the same car can be used over the tracks of both railroads. It says to Y, "We will place our special cars in service in handling through freight over our two lines and will install a connecting track and facilities for changing the gauge of the cars at a point between the ends of our respective lines which shall mark the point of interchange between us. This will involve expense to us in acquiring the special type cars and the interchange facilities but it will save labor for both of us—for us in unloading freight from the cars and getting rid of the empty cars and for you in furnishing empty cars and loading freight into them—and besides, by providing a through service which will eliminate handling the freight at the interchange point, it will attract to both of us a large volume of new business in the transportation of breakable commodities. We will enter into this arrangement with you if you will pay us a certain amount of money commensurate with the savings and benefits which will accrue to you." Can it be doubted under these circumstances that there would be good consideration for the payments to be made by the Y railroad to X? It certainly could not be claimed that the payments were for something having no relation to the railroad operations of Y merely because the devices were also used by and affected the operations of X. As a matter of good business, Y would be warranted in agreeing to pay any amount up to its cost of interchanging freight under the old method and might well be warranted in paying the full amount of such cost in consideration of the added traffic to be expected from the arrangement. The fact that the physical operation of adjusting the length of the car axles might take place

on X's side of the agreed interchange point would not warrant a conclusion that the device was used only by X in completing its operations and had no effect on the operations of Y. And a finding as to the point of interchange would not settle Y's obligation to pay X or determine whether the payments would be legitimate operating costs of Y.

Similarly here, the fact that Seatrain's crane is used to transfer a car on the cradle from the hold of Seatrain's ship to Hoboken's track on the pier alongside does not mean that the extent of the railroad operations for which the shippers pay the lighterage-free rates are not thereby altered or that the payments which Hoboken contracted to make to Seatrain were not related to this alteration of its railroad operations and the benefits which it derived in connection therewith.

Counsel for the Commission, in their brief, go even further in the wrong direction than did the Commission itself in its decision. On page 18 of the Commission's brief, it is said:

> "But the payments are not for any benefit to the rail lines under the rail rates, but are for water transportation services beyond and in excess of anything covered by the rail rates applicable to and from Seatrain's car cradle."

Not only is this assertion incorrect for the reasons just stated but it is also contrary to the decision of the Commission itself. For the Commission recognized that the rail lines received a benefit and that the payments were intended as compensation therefor. Thus the Commission said that there was before it a question whether the payments may be justified

> "as compensation properly payable to Seatrain for the *savings* which it has accomplished for the rail lines by its new method of transfer. The new method of transfer puts the connecting rail lines to less expense under the lighterage-free rates than the old method." (R. 48) (Italics ours.)

This is certainly a *benefit*. And later in its report the Commission said that unless the trunk lines make a payment

> "they will receive an unearned *benefit*. This comes about from the fact that this new method makes it unnecessary for the rail lines to perform all the service which they hold themselves out to perform under the lighterage-free rates." (R. 48)

The decision of the Commission was, therefore, not as its counsel now states, that "the payments are not made for any benefit to the rail lines", but rather that the payments, although intended to be payments for the benefits obtained by Hoboken under the contracts, were not "*necessary* for this purpose", since, as the Commission erroneously assumed, Hoboken could expect to receive these benefits without paying for them. It was this reasoning which led the Commission to its final conclusion that the payments were not a necessary part of Hoboken's costs and that it need not evaluate the benefits nor determine what would be reasonable compensation for Hoboken to pay therefor consistently with efficient business management.

Pursuing the assumption that the payments are made to Seatrain for loading its vessels and not for the savings and other benefits accruing to the Hoboken and the trunk line railroads, the brief of the Commission here, contrary to the Commission's own decision, asserts (p. 18) that "Seatrain is seeking to be paid twice for its patented device" and that having "devoted its patented device to the public use" it "may not look to the preceding rail rates to add to its compensation".

The fallacy of this argument can be exposed by referring again to the fanciful X and Y railroads with their different gauges. X, of course, charges a shipper its rate for transportation from A to B and in the performance of that transportation uses the patented car with the extensible axle which saves it the labor of unloading the freight at B, an operation covered by the rate. Y likewise charges the shipper its rate for transportation from B to C which includes compensation for loading the freight

into a car at B. Y pays X for the use of the car and for its elimination of this loading expense. Is it fair to say that, therefore, X is "paid twice for its patented device," once by the shipper and once by Y? On the theory of the Commission's argument, Y could have the use of the patented car and the savings produced by it for nothing, because the shipper had paid X its tariff rate and X had used the car in transporting freight over its line from A to B. Of course, this is not sensible.

Moreover, in contrast with the fallacious remark in the Commission's brief that by demanding from Hoboken a payment in consideration of establishing the interchange arrangement with it "Seatrain is seeking to be paid twice for its patented device", the actual result of the Commission's decision is that the railroads who have collected lighterage-free rates from shippers to compensate them for the cost of loading and unloading freight will be permitted to retain payment for a service and expense which they do not incur and from which they have been relieved by the Seatrain interchange arrangement.

C. The Court below, having accepted as final the determination by the Commission as to the point of interchange and the extent of the railroad operations covered by the railroads' rates, did not err, as appellants contend, in sending the case back to the Commission for further consideration and a determination as to the value to Hoboken and its trunk line connections of the savings in labor and expense and the added traffic resulting from the agreement with Seatrain and as to the reasonable compensation to be paid by Hoboken to Seatrain therefor as part of Hoboken's costs.

The railroad appellants, in their brief, endeavor to make much of the fact that in its opinion the Court below concluded:

> "Since, as the Commission determined, transportation ends at the cradle, Hoboken completes its obligation under the lighterage-free tariff when it delivers

> the cars to the cradle. The Commission, therefore, held that the payments by Hoboken to Seatrain do not constitute a legitimate transportation cost. Upon this finding, supported by evidence, its judgment is final." (R. 116)

And these appellants assert (Brief, p. 39):

> "Having accepted as conclusive the controlling findings in the case, as made by the Commission, the District Court should have dismissed plaintiff's petition."

Considered by itself out of its context, the sentence quoted by appellants from the opinion of the District Court, may appear to imply an acceptance by that Court of the Commission's finding that no payment by Hoboken to Seatrain for anything under the contract would be a legitimate part of Hoboken's costs for which it would be entitled to reimbursement in the divisions paid to it by its trunk line connections. But it is clear from the opinion as a whole that the Court below did not intend such an inference as to its conclusions to be drawn from the quoted language. Plainly what the lower Court meant was that it accepted the Commission's decision that since the cradle was found to be the point of interchange the payments could not be considered compensation for any physical operations beyond that point. The cases cited uphold only the finality of a decision of the Commission determining the physical limits of a railroad service covered by its rates. *United States* v. *Pan American Petroleum Corp.*, 304 U. S. 156; *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402. They do not hold that the Commission may, without being subject to review by the courts, fail to consider and make a finding as to whether the operations and costs necessary to make a sufficient delivery at the determined interchange point are reduced by some contractual arrangement which has been entered into by the railroad, or that it may fail to make a finding as to the reasonableness of the consideration called for by such a contract when the matter before the Commission in-

volves the measure of reasonable divisions to be received by the railroad in the light of efficient and economical operation and management.

It is plain, therefore, that the lower Court, although accepting as final the Commission's determination as to the interchange point, did not hold that it was bound to accept the Commission's determination that no payment whatever by the Hoboken for the savings in labor and expense which it secured from the arrangement in performing its railroad transportation obligation and for the added traffic which it obtained from the arrangement would be a legitimate part of its railroad costs under efficient and economical management.

There was therefore no inconsistency in the action of the lower Court in accepting as final the Commission's finding as to the interchange point and yet directing the Commission to reopen the proceeding to consider and make a further finding as to the amount of compensation consistent with efficient management which Hoboken should pay for the benefits derived by it from the interchange arrangement with Seatrain.

In any event, however, this Court is obviously not bound by the lower Court's language, and may itself pass independent judgment on the Commission's action. And it seems clear that the question as to whether or not certain items of expense should be included in a carrier's costs for the purpose of determining rates and divisions is one upon which the decision of a regulatory tribunal cannot be conclusive and binding on the courts. *West Ohio Gas Co.* v. *Comm'n.*, 294 U. S. 63, 74; *Driscoll* v. *Edison Co.*, 307 U. S. 104, 120.

D. The briefs of appellants contain statements in other respects which are either incorrect or are not germane and tend to confuse the issues.

It would unduly extend this brief to attempt to answer page by page the briefs of the appellants or correct the impressions which other statements therein contained may leave with the Court. Therefore, one or two further exam-

ples must suffice to indicate how far these briefs may tend to lead the Court from the real issues involved and the pertinent and correct facts.

(1) In an attempt to explain away the fact that when a shipper pays the lighterage-free rates he pays to the railroads compensation for labor and expense of loading and unloading cars, an attempt is made to have it appear that under the lighterage-free rates there is no "separate and independent tariff obligation" to load and unload cars because the railroads are not in all instances called upon to perform this operation (Commission's brief, p. 36; railroad appellants' brief, p. 55). The important fact here, however, is that the lighterage-free rates which shippers pay to the railroads *include compensation to them for loading and unloading*, whether the operation is actually performed in every instance or not (R. 176; *Lighterage Cases*, 203 I. C. C. 481). Moreover, as is correctly stated at page 6 of the Commission's brief,

> "Under the lighterage-free rates the service which the railroads hold themselves out to perform includes the unloading of inbound cars and the placing of the lading within reach of ship's tackle and a corresponding but reverse service on out-bound freight." (citing R. 47)

and the "rail rates exacted from shippers" which are not under attack "presumptively yield adequate compensation when the 75 cents for the unloading service is expended by the railroads" (Commission's brief, p. 29).

(2) It is then said in the Commission's brief (p. 36) that in the interchange with Seatrain the only railroad

> "obligation or undertaking is completely satisfied and extinguished when the freight is placed at or removed from the car cradle."

and that this is so because

> "Seatrain does not want to load or unload railroad freight cars"

since its devices permit it to handle freight in cars. It is true, of course, that Seatrain's vessels are designed to transport freight in railroad cars and its facilities are devised to accomplish transfer of freight in cars between its vessels and railroad piers. However, it does not follow from this that Seatrain would have established its terminal at Hoboken and would have agreed to assume all of the responsibilities of handling cars and to make its cradle available as an interchange point without a contract providing for compensation to be paid to it by Hoboken. It located at Hoboken only pursuant to a contract and it cannot be assumed that Hoboken could have procured Seatrain's location there without a contract. Seatrain might have gone to some other carrier that would have entered into a similar contract with it. In fact, as will be pointed out again later herein, the record shows that Seatrain has not established a service at any port where its interchange arrangement has resulted in savings for the railroads without obtaining consideration for such savings and for the benefits to the rail carriers.

(3) Despite the fact that under the Commission's decision the trunk line railroads out of an assumed rate of \$7* (see *supra*, pp. 19-22) would retain \$6.40 if the freight were to move by Seatrain as compared with only \$5.65 if the freight were to be forwarded via a break-bulk line docking at Hoboken or even less if delivery to the ship were to be accomplished by lighter, appellants argue that the Court below erred in concluding that the railroads would receive a windfall. The Commission itself, in its report, recognized that "they will receive an unearned benefit" (R. 48).

It is contended by appellants, however, that there is no windfall because the lighterage-free rates cover a wide variety of terminal services. This is true and the fact that the rates are thus made on what is commonly called a "group" basis might be a reason for not immediately

* The railroad appellants in their brief (pp. 70, 71) object to the District Court's use of an assumed rate of \$7, but the result would be similar whatever figure is used.

passing on the savings to shippers in the form of lower rates on freight to be delivered to Seatrain than on freight to be delivered to a break-bulk carrier. However, this circumstance does not negative the fact that under the Commission's decision, the railroads, having done nothing on their part, would receive greater compensation on Seatrain traffic than on other traffic for both of which they would collect from shippers in the lighterage-free rates sufficient compensation to cover the labor and expense of loading and unloading. The group method of rate-making does not prevent the adjustment as between carriers of such savings so that those who accomplish the savings and produce the benefits for others will receive the fruits of their enterprise. This is recognized by the railroads themselves in the allowances which they pay to various steamship lines, as shown by the record in the proceeding before the Commission (R. 177, 423).

(4) On this same point, the brief for the railroad appellants, on page 54, quotes from the report of the Commission to the effect that:

> "a similar unearned benefit would accrue if a steamship company now docking on the Manhattan water front and served by lighter should shift to a dock with direct rail connections on the Jersey shore."

It was admitted by a trunk line railroad witness, however, that when a steamer, docked at one place, is moved to a railroad terminal, thereby saving the railroad the necessity of lightering freight to the vessel, there is a tariff providing for the payment by the railroad "of certain shifting allowances" (R. 419). Moreover, if a vessel moves from a New York City pier on the Manhattan side of the harbor to a railroad pier on the New Jersey side, it is only the railroad owning the pier which receives any saving since other railroads must still reach the vessel by lighterage or by absorbing the connecting railroads' charges plus the terminal service charge of the railroad serving the pier as shown in its tariff. *Lighterage Cases,*

203 I. C. C. 481, 497. Furthermore, it is probable that the railroad at whose pier the vessel would dock would furnish the pier to the vessel without charge since it is not the general practice for railroads to make a charge for the vessels docking at their New Jersey piers for the use of the pier (R. 419). Even more than this, as the Erie Railroad witness testified, not only would there be no charge for the piers, but in various cases the railroads pay allowances to steamship companies or to the steamship companies' stevedores (R. 423).

(5) At various points in the Commission's brief, it is asserted or implied that the payments from Hoboken to Seatrain are to reimburse it for the royalties which it pays on its patents and it is claimed (p. 41) that "there is no obligation on Hoboken to pay for Seatrain's patent rights." What has been said under heading "B" above is an answer to the contention that such is the purpose or effect of the payments. On pages 40 and 41 of their brief, counsel for the Commission go farther and after stating that Seatrain pays approximately $50,000 a year in royalties on its combination patents, they indulge in computations from which they would have it appear that the payments to Seatrain under the contract would amount to $93,235 a year. However, as the record shows, a great deal more expense than the patent royalties is involved in accomplishing the benefits enjoyed by Hoboken from the interchange arrangement. But what is even more serious, the imputation that by the increased divisions of the lighterage-free rates which it seeks, the Hoboken "is claiming for the benefit of Seatrain * * * $93,235.70 per year" is incorrect and a gross exaggeration. In computing the sum of $93,000 counsel for the Commission apparently failed to notice that the figure of 9,633 cars interchanged with Seatrain in 1937, which is the basis of their computation, is not limited to cars interchanged with the trunk lines but includes a very large number of cars originating and terminating locally on the Hoboken, as to which obviously there is no question of divisions with the trunk lines or of

reimbursement by them (Exhibit "46", R. 606). The payments by Hoboken to Seatrain under the contract in connection with cars moving under through lighterage-free rates on which increased divisions are sought would be much less than the amount suggested by counsel for the Commission.

(6) The briefs of both appellants attempt to justify the Commission's decision on the ground that, after all, the division of 60 cents really is adequate and cannot be considered confiscatory and that, therefore, it is to be assumed that the Commission did evaluate the benefits derived from the contract.

(a) The first point argued in this connection in the brief of the railroad appellants (pp. 66 ff.) is that the Hoboken presented its case on the theory that it should receive a uniform amount per ton regardless of the balance left for its trunk line connections. This is correct, but Hoboken had no alternative since the divisions on all other freight which have been in effect since 1920 under agreement with the trunk lines themselves have been on this basis. Moreover, Hoboken is a switching line and it is usual for the charges of switching carriers to be on a uniform basis to cover their costs. *Rochester Switching Case*, 95 I. C. C. 30, 45; *Switching Rates in Chicago Switching District*, 195 I. C. C. 89, 115.

(b) Next it is argued in both briefs that the Commission found that the division of 60 cents was sufficient to cover Hoboken's costs. True, the Commission found (R. 41). "The record warrants the conclusion that the former division of 60 cents and the present division of 63 and 66 cents are sufficient to cover the cost of the service performed by complainant." The Commission's report makes it clear, however, that its finding was based solely on its assumption that no payments to Seatrain were to be considered part of Hoboken's costs and that the 60 cents covered simply the costs of Hoboken's switching operations

alone. After referring to the division of 60 cents, the Commission said (R. 38):

> "Whether it is entitled to a greater division out of the lighterage-free rates depends in large part on whether certain payments which complainant makes to Seatrain may be properly included in its costs for performing its part of the rail transportation to and from Hoboken."

The Commission's whole report leaves no room for doubt that it was its finding that if any payment to Seatrain was to be considered part of Hoboken's legitimate costs, the division of 60 cents would not cover such costs and Hoboken's operations would be conducted at a loss.

(c) The railroad appellants then compare figures as to Hoboken's revenues with revenues left for the trunk lines. It must be remembered, however, that the rates are established by the trunk lines and if they are not adequate to cover the costs of a switching line whose services are necessary to complete the trunk lines' obligations and leave a fair return for the trunk lines, this is a matter for which the switching line cannot be blamed. The Commission expressly found, moreover, that there was "no proof that the joint rates in question are on an unremunerative level" and that, therefore, the divisions to Hoboken as a switching carrier should be fixed in an amount to cover its full costs.

It is said (p. 72) that with the division of 60 cents Hoboken for its short switching movement receives 15 per cent of the total revenue for an average rail haul of 258 miles and that this proves that this division was not unjust or unduly prejudicial to Hoboken, and on the next page reference is made to certain selected figures indicating the percentages of the total revenue which Hoboken would receive if its division were made $1.35 per ton. The Court will appreciate that the expense per mile of a terminal switching line operating in a congested metropolitan area is not to be compared with the per mile expense of

a line haul movement and that if a terminal switching carrier's costs are to be covered it must receive a much greater proportion of the total revenue than is represented by any mileage ratio, *New England Divisions Case*, 261 U. S. 184; *Rochester Switching Case*, 95 I. C. C. 30, 45; *Chicago Switching Case*, 195 I. C. C. 89, 115.

Moreover, the appellants do not explain what justification there is for them to retain 75 cents per ton more out of lighterage-free rates on freight interchanged with Seatrain than they voluntarily accept out of the same rates on freight interchanged with a break-bulk steamship company or than remains to them after their terminal operations on freight which they, themselves, lighter to and from shipside.

In these comparisons of revenue figures, furthermore, the railroad appellants fail to tell the Court, as the evidence shows, that after paying to Hoboken the division of $1.35 per ton sought by it out of the lighterage-free rates, the average revenues remaining to the trunk line railroads would be 35.54 cents per car mile or substantially more than the average revenue of 20.99 cents per car mile which they earn on other freight interchanged with the Hoboken under divisions agreed to by the trunk lines, and even more in excess of their average revenues per car mile on all traffic (Exhibit "24", R. 524; R. 277-279).

(d) The Commission's brief likewise attempts to show that the division of 60 cents must be adequate by asserting that it represents an increase of 215 per cent over the allowance of 20 cents per ton in effect prior to July 1, 1918 and that had this old division of 20 cents been increased in accordance with the general rate increases, the present divisions would be 38, 40 or 42 cents. The record before the Commission shows, however, that the division of 60 cents which is the established division, when the Hoboken is called upon only to switch freight, and the division of $1.35 which it receives when it assumes the cost of loading or unloading were established in 1920 as a compromise of litigation which was instituted because the old division of 20 cents was inadequate (R. 159). Moreover, the ref-

erence to the early division of 20 cents does not negative the fact that the Commission has here found that 60 cents is a compensatory division only where Hoboken's obligation is limited to switching and that it is not sufficient to cover as a part of Hoboken's cost any expense for loading or unloading or any payment to Seatrain for relieving it from such expense and for the benefits which Hoboken receives under the interchange arrangement.

In final answer to these figures and other features of appellants' arguments, it may be said that they would be pertinent for discussion here only if this Court were to substitute its judgment for that of the Commission on what the figure of the Hoboken's divisions should be. This, of course, is not the matter before the Court. Such arguments can be designed, therefore, only to divert the Court from the central issue—which is, whether the Commission was right in excluding any payment to Seatrain from Hoboken's costs for the purpose of fixing its divisions, without considering the value of the benefits for which the payments are made and without deciding whether the arrangement calling for some payment was consistent with the efficient and economical operation of the Hoboken.

POINT II

The Commission failed to do what was required of it when it dismissed the Hoboken's complaint without considering and making a determination as to the value to Hoboken and its trunk line connections of the interchange arrangement with Seatrain and what would be reasonable compensation therefor consistent with the efficient and economical operation of the Hoboken, to be included in Hoboken's costs and to be reimbursed to it by the divisions to be paid to it by the trunk lines out of the lighterage-free rates. The reasons given by the Commission for its decision did not justify its nonaction. The Court below correctly sent the proceeding back to the Commission.

From a consideration of the underlying fallacies of the arguments of the appellants, we turn now to consider the decision of the Commission itself. This, too, to a considerable extent reflects the same fallacies, but the Commission attempted to buttress its dismissal of Hoboken's complaint with other reasons which must be examined and which, we submit, will be found equally without merit.

A. **The Commission's determination that the cradle marked the point of interchange between Hoboken and Seatrain did not settle the matter; neither did it justify a disregard of the contract, nor excuse the Commission from valuing and determining the reasonable compensation to be paid by Hoboken for the benefits and savings to it in performing its rail service and in being able to interchange on the cradle.**

The Commission, after stating that the railroads under the lighterage-free rates hold themselves out to load and

unload cars and place and receive freight within reach of ship's tackle, went on to say in connection with interchange with Seatrain (R. 47):

> "The unloading or loading of the car lading and its delivery or receipt at ship's tackle is therefore unnecessary. The rail lines do all that is required when they place the cars in or take them from the Seatrain cradle. From this point of view the payments which complainant makes to Seatrain cover no part of its transportation service under the lighterage-free rates and are in addition to the full costs of that service."

In regarding this finding as determining the issues, the Commission rested its conclusion on the same assumption which constitutes the basic premise of appellants' argument, considered in the previous point, and what is there said regarding appellants' contention is equally applicable to the decision of the Commission. What the Commission failed to find, as required by the evidence before it, was that it is only by virtue of the contract between Hoboken and Seatrain that the cradle is made the point of interchange and that the railroads are able to "do all that is required when they place the cars in or take them from the Seatrain cradle."

Let us consider the matter first in connection with freight brought in by a steamship and then to be transported by railroad to the interior. If Seatrain should see fit to deliver freight to Hoboken on its pier loose and not in a car, either because it did not choose to turn over to Hoboken the car which it had used for the movement of the freight or because it had elected not to use its facilities at its port of loading to place the car on the ship but had carried the freight loose in the ship's hold, Hoboken would clearly be under an obligation under the lighterage-free rates to furnish the car required for rail movement and to load the freight into the car.

Therefore, by bringing the car with the freight, by using its special car elevator and its patent rights to de-

liver the car to Hoboken along with the freight and furnishing Hoboken with the freight already loaded in the car, Seatrain actually fulfills for Hoboken a part of Hoboken's transportation obligation and undertaking. And Seatrain does these things under the terms of the contract and it is for these that the payments to Seatrain are made. We submit that the payments *are* directly related to Hoboken's transportation operations as a railroad. They are for saving the labor cost and other expenses which Hoboken would otherwise have in fulfilling its transportation obligation and for increasing Hoboken's volume of business.

The Commission, as we see it, confused the extent of the railroads' transportation undertaking and obligation to the shipper of the freight who has paid lighterage-free rates with the physical operations and labor required to carry out the undertaking. We submit that the contract does not diminish the Hoboken's transportation undertaking and obligation to a shipper paying the lighterage-free rates, but provides another means for fulfilling that obligation which eliminates labor expense which would otherwise be necessary. The fact that the contract saves Hoboken the physical operation of placing an empty car and the labor of loading the freight into the car does not alter the extent of Hoboken's transportation obligation to provide a car, load the freight into the car for rail movement, or alter the fact that the shipper has paid for this. It is a strange conception that something which eliminates labor otherwise necessary to fulfill an obligation diminishes the extent of or eliminates the obligation to the patron.

Hoboken can fulfill its obligation without having itself to furnish a car and provide the labor necessary to perform the physical loading of the freight into the car only by reason of its contracts with Seatrain. This must be plain on reflection. Thus Seatrain in bringing freight from New Orleans or Havana to Hoboken already loaded in a railroad car, has thereby become responsible to the owner of the car for the safety of the car and for the payment of rental

thereon. Obviously, Hoboken could not compel Seatrain to turn the car over to it along with the freight without some agreement between Hoboken and Seatrain with regard to responsibility for the car. Moreover, Seatrain could not have gotten the freight on board its ship at New Orleans or Havana already loaded in the car nor made it available to Hoboken loaded in the car on its cradle at Hoboken without the use of its car elevators and its patents.

Furthermore, since there have been contracts between Hoboken and Seatrain governing the interchange between them of freight in cars from the beginning of Seatrain's establishment of its terminal at Hoboken and every car which Seatrain has delivered to Hoboken has been delivered or received under the terms of such a contract, it cannot be assumed that Hoboken could fulfill its undertaking under the lighterage-free rates to furnish a car and have freight loaded in a car at its expense for movement to the interior without a contract, or that in the absence of such a contract Seatrain would continue to deliver freight to Hoboken already loaded in cars.

With respect to freight originating at an interior point and transported to Hoboken for delivery to a Seatrain ship, the situation is the same. The switching carrier switching cars to the steamship pier must complete the transportation undertaking of the trunk line railroads under their lighterage-free rates. This means doing everything necessary to place the freight in the possession of the steamship in such a way as to obligate the steamship to accept and transport it to its ultimate destination. *N. Y. Central R. Co. v. The Talisman*, 288 U. S. 239, 241 (1933). What constitutes delivery of freight to and its acceptance by a carrier may be determined either by general custom where there is a custom, or by agreement where there is none.

In an early case, *Texas & Pacific Ry. Co. v. Clayton*, 84 Fed. 305, affirmed in 173 U. S. 348, the Circuit Court of Appeals for the Second Circuit said (p. 308):

"What constitutes a sufficient delivery to the connecting carrier is sometimes a doubtful question. A manual transfer of possession is not essential. A constructive change of possession from the first to the second carrier may amount to a delivery. It may be safely affirmed, as a proposition applicable to all cases, that a deposit of the goods with notice, express or implied, *at any place where the second carrier has control of them, conformably with usage created by the course of the business between the two carriers*, is a sufficient delivery, and discharges the first carrier." (Italics added.)

We submit that without some arrangement between Hoboken and Seatrain, by virtue of which Seatrain has agreed to accept freight in a car on its cradle and use its crane and facilities for the loading of the freight on its vessel in the car, Hoboken could not fulfill its obligation by merely placing the car where a captain of a Seatrain vessel could look at it. In *Seaboard Air Line Ry.* v. *Friedman*, 128 Ga. 136, the question was whether the placement of a car by one railroad upon a transfer track of another constituted an acceptance of the car by the latter sufficient to discharge the former from its obligation. The Court held it did not, saying (p. 318):

"Under these conditions the mere placing of the car on the 'transfer track' was not a delivery to the defendant. Under the custom proved, and in the absence of some affirmative act by some authorized agent of the defendant, amounting to an acceptance of the car, the placing of the car on the 'transfer track' was a mere tender; and delivery thereof would not be complete before it was actually accepted by the train crew of the defendant's road, to carry it upon its route."

In assuming that by merely placing the car alongside Seatrain's ship without an agreement Hoboken would thereby accomplish interchange and complete delivery and that Seatrain would accept the freight in that

way, the Commission proceeds contrary to the evidence of record. There is no proof of any custom, apart from the contracts, from which it can be found that without the contracts Seatrain has agreed to accept freight in a car placed on its cradle, hoist the car aboard its ship with its facilities and transport the freight in the car. For the evidence shows that from the very beginning of Seatrain's operations there have been contracts between Hoboken and Seatrain fixing the point and method of interchange between them and determining their respective liabilities and obligations, including Hoboken's obligation to pay Seatrain for the benefits accruing to it.

Furthermore, Hoboken for its part could not be expected to turn a car over to Seatrain without some undertaking from Seatrain with respect to the car. Hoboken is responsible to the railroad owning a car for the safekeeping of the car and for the payment of compensation for the use of the car until such time as the car comes into the possession of another railroad obligated by the so-called Car Service and Per Diem Agreement to take over these responsibilities. Seatrain, as a water carrier, has not been permitted to become a signatory of the Car Service and Per Diem Agreement governing payment by railroads for the use of each other's cars. Therefore, Hoboken could very properly refuse to allow a car to be taken aboard a Seatrain ship unless and until it had secured Seatrain's undertaking to reimburse and save it harmless from its obligations with respect to that car. This is provided by the contracts and is one of the undertakings by Seatrain for which the payments to it are consideration.

Therefore, it is the contract itself which enables Hoboken to complete its transportation service by the placement of the car on the cradle alongside Seatrain's ship, and the payments, which are Hoboken's consideration for the contract, are costs incurred by it in performing its transportation service.

It is conceded, however, that a carrier may enter into an improvident contract and that however binding the ob-

ligation of the contract may be upon it, the Commission may properly refuse to allow it to include payments under the contract in its costs for the purpose of arriving at the divisions to be allowed to it by its connections. For Section 15(6) of the Interstate Commerce Act requires that

> "In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, * * *."

And plainly whether a particular contract calls for payments in excess of the benefits received by the carrier is a matter which goes to the efficiency with which the carrier is operated.

We submit, therefore, that the Commission, instead of disregarding the contracts altogether and erroneously assuming that the Hoboken could fulfill its obligations under the lighterage-free rates by a mere switching of the cars without any arrangement with Seatrain, should, instead, have considered and determined whether the payments called for by the contracts were reasonable in consideration of the benefits accruing to Hoboken thereunder and were consistent with the efficient operation of Hoboken and if it reached the conclusion that the payments were excessive, should have determined how much thereof would be consistent with efficient operation on Hoboken's part. But this the Commission failed to do, and it is for this that the lower Court has remanded the proceeding to it.

This failure becomes the more serious in view of the fact, to be considered under the next point, that the Commission apparently treated the contracts as nullities in view of the corporate relationship between Hoboken and Seatrain.

B. **The fact that after the preliminary agreement between Hoboken and Seatrain, Seatrain had acquired Hoboken's stock did not deprive the contracts entered into between them, embodying the principles of the preliminary agreement, of all binding effect upon Hoboken. The Commission's decision that because of the stock ownership the contracts could be ignored and it could be assumed that Hoboken could expect all of the savings and benefits thereunder without paying any consideration and that therefore it need not determine what would be reasonable consideration to be included in Hoboken's costs was erroneous in law and arbitrary.**

The Commission does not describe the reasoning which has led to its conclusion, but its emphasis upon "the control which Seatrain exercises over complainant" indicates that if there were no relationship of stock ownership or common directors—as if, for example, Hoboken had entered into a contract with Pan-Atlantic Steamship Corporation obligating Hoboken to make payments to Pan-Atlantic on freight delivered to or received from it in consideration of Pan-Atlantic's using special facilities and relieving Hoboken of operations which would otherwise be required in accomplishing the interchange of the freight—the Commission would have regarded the payments under such a contract as part of Hoboken's full costs of performing its transportation service under the rates to be divided.* This suggests that the Commission regards a contract between a subsidiary corporation and a parent corporation as having no binding or obligatory effect upon the subsidiary.

There can be no doubt that there was ample consideration for the payments to Seatrain in the benefits received by Hoboken under the contracts and in the undertakings and expenses incurred by Seatrain in affording those benefits to Hoboken. In 1932, when Seatrain was making ar-

* Indeed Hoboken has such a contract with a subsidiary of Pan-Atlantic under which it pays it 70 cents a ton on freight interchanged with Pan-Atlantic, and when it incurs this expense it receives a division of $1.35, which takes this into account (Exhibit "20", R. 515).

rangements for the location of a terminal in New York Harbor, Hoboken was in bad financial condition and desperately in need of additional business. Seatrain, whose ships and facilities would provide a new method of rail-water transportation without breaking bulk at the ports, offered decided attractions to shippers and promised a substantial volume of new business. That this promise was justified is shown by the figures from the evidence, included by the Commission in its report, where it found that in 1936 freight interchanged by Hoboken with Seatrain amounted to 9,670 cars out of the total of 14,961 cars handled by Hoboken in that year. In 1937, Hoboken interchanged with Seatrain 9,633 cars of freight out of a total of 15,799 carloads handled by it (R. 36). Furthermore, by reason of the arrangement with Seatrain, Hoboken was enabled to handle this freight efficiently and economically, and was saved the necessity of furnishing cars for inbound shipments or of disposing of cars containing freight moving in the other direction.

Under these circumstances, and in the complete absence of any proof or even claim of fraud or other improper use by Seatrain of its stock control, we submit that to treat the contracts as imposing no obligation on Hoboken and to assume that although Hoboken has entered into the contracts, it is not "necessary" for it to make the payments which it has agreed by the contracts to make, amounts, in effect, to denying the existence of the separate corporate entities and their capacity to contract with each other. Obviously, the entire body of corporation law cannot be thus set at naught.

United States v. *Del., Lack. & West. R. R.*, 238 U. S. 516, 527;

Taylor v. *Standard Gas & Electric Co.*, 96 F. (2d) 693 (C. C. A., 10th Cir.).

In the case first cited, the Court said (p. 528):

"* * * Many private corporations have both stockholders and officers in common, yet *they may*

nevertheless make contracts which will bind both of the separate entities." (Italics ours.)

In *Kentucky Electric Power Co.* v. *Norton Coal Mining Co.*, 93 F. (2d) 923 (C. C. A., 6th Cir., 1938), the Court said (p. 926):

> "On the other hand, it is likewise well settled that a corporation is ordinarily an entity, separate and apart from its stockholders, and mere ownership of all the stock of one corporation by another, and the identity of officers of one with officers of another, are not alone sufficient to create identity of corporate interest between the two companies or to create the relation of principal and agent or to create a representative or fiduciary relationship between the two. If such stock ownership and potential control be resorted to only for the purpose of normally participating in the affairs of the subsidiary corporation in a manner usual to stockholders and not for the purpose of taking some unfair advantage of the subsidiary or using it as a mere adjunct to the main corporation or as a subterfuge to justify wrongdoing, their identity as separate corporations will not be disregarded but *their respective rights when dealing with each other in respect to their separate property will be recognized and maintained.*" (Italics ours.)

There is neither claim, proof nor finding that the situation in the present case comes within the principle of those decisions where the courts have held that the separate corporate entities should be disregarded when the corporate control has been improperly used for the injury of third parties.

Conceiving, apart from any such question of corporate relationship, that the determination of divisions presents a question of fairness and equity to the several parties to the through transportation, Hoboken offered evidence before the Commission which clearly showed that divisions for Hoboken based upon including in its costs the contract payments to Seatrain would not work unfairness or inequity to the trunk line railroads. Indeed, we believe that

the evidence shows, on the contrary, that divisions for Hoboken which do not regard the contract payments to Seatrain as a part of Hoboken's costs would do inequity in according to the trunk lines more than a reasonable share of the total transportation revenue. As the Commission expresses it (R. 48), the trunk lines thereby "will receive an unearned benefit".

The evidence before the Commission shows that after paying to Hoboken a division of a lighterage-free rate sufficient to reimburse it for the payments to Seatrain as well as its other costs in connection with the traffic, the earnings remaining to the trunk lines out of the rates will be as great as their earnings from the rates on similar traffic interchanged with Hoboken and delivered to or received from vessels of the Holland-America Line, Pan-Atlantic Steamship Corporation and other water carriers. They will also equal or exceed the revenues which the trunk lines have when they themselves make shipside delivery after paying their costs of lighterage service or after making payments which they themselves make to steamship lines who take over part of the physical operations incident to interchanging freight with vessels.* Accordingly, it certainly cannot be said that Seatrain has used its control of Hoboken to compel it to enter into contracts whose enforcement will do injury or injustice to the third parties concerned, the trunk lines, and that for this reason the contracts may be disregarded as evidence of the necessity on Hoboken's part to make the payments called for thereby if it is to enjoy the fruits of the contracts.

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* The Erie Railroad pays the Dollar Line 3 cents per 100 pounds for unloading freight from cars at Pier 9, Jersey City. Also, there was an arrangement between the Erie and the Arnold Bernstein Line in connection with the handling of unboxed automobiles, pursuant to which the Erie paid the Arnold Bernstein Line the equivalent of $1.00 per ton for unloading automobiles from cars and placing them on its car elevator. A similar arrangement was in effect between the New York Central and the Black Diamond Line (R. 177-178). Where the railroads interchange freight with steamships by means of lighters, the evidence shows that they incur costs in various amounts ranging from $1.39 to $2.02 per ton (Exhibit "8", R. 461; Exhibit "14", R. 474, 482).

We concede that in a case such as this, the fact of corporate relationship calls for scrutiny of the terms of a transaction from the standpoint of its business wisdom and efficiency, and we urged upon the Commission that it approach the problem from this point of view, but it failed to do so. In this the Commission erred, the more so since it thereby also failed to fulfill its duty under the statute because it made no inquiry or determination whatever as to whether the contracts and the payments thereunder represented acts of efficient business management in the interests of Hoboken.

In order to reach a proper decision on this point, the inquiry of the Commission should have been as to whether, if Hoboken were entirely independent and its stock were not owned by Seatrain, its action in entering into the contracts would have been considered contrary to efficient operation and the payments thereunder extravagant expenses, in the light of which the Hoboken was not entitled to ask that its divisions be determined. Had the Commission made this inquiry, as required by the statute, we submit that its finding should have been that the contracts constituted a wise and business-like deal for Hoboken to enter into in its own interest, and that the payments thereunder were costs incurred in the course of efficient operation.

As we have said, the terms of the original contract were actually agreed to when Hoboken was under independent management, which obviously thought that the contract was a good one for Hoboken. Its advantages to Hoboken are obvious in the large volume of additional freight, previously described, which interchange with Seatrain affords to it and in the savings which it enjoys in handling that traffic.

In the Commission's brief, it is said (p. 42):

> "The corporate relationship of the contracting parties is of legal significance only to the extent that it explains the reason for the existence of the contract."

Just what is meant by this sentence it is difficult to understand. The brief continues:

> "The situation would be exactly the same, and equally objectionable, if Seatrain were not the parent corporation and did not own a single share of Hoboken's capital stock."

Counsel for the Commission, however, disregard the language of the Commission's own opinion, for the Commission expressly recognized that there was nevertheless a question

> "whether such payments may be justified • • • as compensation properly payable to Seatrain for the savings which it has accomplished for the rail lines by its new method of transfer. The new method of transfer puts the connecting rail lines to less expense under the lighterage-free rates than the old method. It may be argued, therefore, that they would be justified in making any payments that might be necessary for the purpose of inducing the establishment of the new method of transfer, provided they were left with a net saving." (R. 48)

It was in considering whether the payments were "necessary" to secure these savings for Hoboken that the Commission held that the contract was "not evidence to this effect, in view of the control which Seatrain exercises over complainant" (R. 48).

Certainly, therefore, the case may not properly be presented to this Court on the assumption indicated in the Commission's brief herein, that if Seatrain and Hoboken had been entirely independent the Commission would have regarded the contracts as no proof that the payments thereunder were necessary to secure for Hoboken the benefits of the interchange. This point is emphasized by the next sentence of its report, in which the Commission asserted:

> "No such payments have, so far as the record shows, been exacted or obtained by Seatrain from an independent rail connection." (R. 48)

Finally, on this point it may be remarked that the fact that Hoboken is now in reorganization and is being operated under the direction of the Court pursuant to Section 77 of the Bankruptcy Act, of course, eliminates the factor of control by Seatrain for the present at least.

C. The Commission's decision that it need not consider what would be reasonable compensation to be paid by Hoboken for the savings and benefits to it because, as the Commission concluded, there was no evidence that any other independent railroad had agreed to pay compensation to Seatrain, was arbitrary, contrary to the evidence and contrary to other evidence which the Commission's Examiner excluded. Moreover, the Commission has since arbitrarily and erroneously refused to reopen the proceeding to receive such evidence.

If it were true that no similar consideration had been secured by Seatrain elsewhere for the use of its facilities and for the benefits to a railroad of an interchange arrangement with it, this might cast doubt upon whether it was the part of efficient operation for Hoboken, either with or without Seatrain's stock ownership, to enter into a contract to make payments to Seatrain. But certainly this would not in any way alter the binding effect of the contract itself.

However, the Commission's finding or assumption that Seatrain "exacted" no such payments from an independent rail connection was contrary to the evidence.

The fact is, as the uncontradicted testimony before the Commission shows, that such payments were "exacted" from Hoboken itself and agreed to by Hoboken when it was itself "an independent rail connection" and before Seatrain ever acquired a share of its stock (R. 226-232). Evidence was also offered, which the Commission's Examiner erroneously excluded, that before negotiations were entered into between Hoboken and Seatrain, Seatrain considered locating its terminal on the properties of one or another

of the trunk line railroads reaching New York Harbor and conducted negotiations with this in view, and that one of the essential terms of the negotiations to which no trunk line took exception was that the trunk line should make payments to Seatrain in consideration of Seatrain's use of its facilities and the benefits accruing to the railroad therefrom (R. 210-222).

The record shows that various of the trunk lines make payments to steamship lines in connection with services performed by the latter in the interchange of freight between them (R. 177, 178, 423), and that Hoboken itself has contracts with steamship lines or their stevedores under which it incurs payments on the basis of which its division of $1.35 is predicated (Exhibits "20", "21", R. 515, 519).

Therefore, if some contract and some payment would have had to be considered a proper part of Hoboken's necessary costs, had it been entirely independent, the only question requiring the exercise of the Commission's discretion should have been whether the payments were excessive and unreasonable. But this is the question which the Commission failed to decide.

True it is that at the time of the proceeding before the Commission no payments in exactly the same form were made to Seatrain by the railroads serving its piers at New Orleans and Havana, which were the only other ports to and from which Seatrain then operated.* The record

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* In this connection, it may be appropriate to apprise this Court, as was done in the Court below, of a circumstance in the proceedings before the Commission which does not appear from the record because it occurred after the Commission had rendered the decision here under review. In the Spring of 1940, Seatrain with two new ships of the same type, established a service between Texas City, Texas, and Hoboken. In view of the remarks in the Commission's report now being discussed, Hoboken then filed a petition with the Commission asking it to reopen the proceeding to receive evidence that Seatrain *had* entered into agreements with the railroads serving Texas City, which were entirely independent of it, pursuant to which they agreed to make payments to Seatrain similar to those contracted for by Hoboken. The Commission refused to reopen the proceeding and denied the petition.

shows, however, that the explanation for this fact at New Orleans was that the New Orleans and Lower Coast Railroad in arranging with Seatrain for the latter's terminal on its line, south of New Orleans proper, saved Seatrain's vessels seventeen miles of steaming in each direction and Seatrain took this saving into account as part consideration for placing its facilities at the service of the New Orleans and Lower Coast. Moreover, Seatrain did enter into a contract with the New Orleans and Lower Coast Railroad governing the terms of the interchange of cars between them.* The evidence before the Commission also showed that at Havana the railroad freight rates do not include any services on the part of the railroads in interchanging freight with steamship lines other than the switching of cars, the unloading of freight from the cars or loading into the cars being operations performed by the shippers or the steamship companies at their expense. Therefore, at Havana the use of Seatrain's facilities did not result in any saving in the operations embraced within the railroads' undertaking.

D. **The Commission's final reason for concluding that the payments are not a necessary part of Hoboken's full costs, namely, that "there is ample reason to conclude, also, that the improved method of transfer is only an incident to the Seatrain plan of transportation, and that this plan has sufficient advantages to impel its use and promotion by Seatrain regardless of any contributory payments from rail connections" is entirely arbitrary, contrary to and without support in the evidence.**

Here the Commission disregarded what was actually done and substituted its imagination for the facts as to what Seatrain's management might or might not be willing to do. The Commission did not indicate what the "ample

* This contract is further described by the Commission in its report, referred to in its decision herein, in *Investigation of Seatrain Lines, Inc.*, 195 I. C. C. 215, 225-226.

reason" was for concluding that Seatrain would do all the things covered by the contract without a contract and without any consideration, or on what facts the "ample reason" rests. The reality is that ever since Seatrain has been at Hoboken and the Hoboken has been interchanging freight with Seatrain, there have been contracts between them. Hence, there is no ground for assuming that Seatrain would enter into the arrangement and maintain its terminal at Hoboken without such contracts and without the consideration provided for therein. But further than this, the evidence of the history of the negotiations prior to the contracts completely negatives the idea that Seatrain would have been willing to use its facilities in saving the railroads labor and expense "regardless of any contributory payments from rail connections." The record contains no evidence that Seatrain conducted any negotiations for a terminal at New York Harbor except on the terms of payment to it, representing compensation from the railroads for the savings in labor and expense derived by them from Seatrain's use of its interchange devices and methods. Moreover, as previously stated, there was offered to the Commission evidence, which the Commission's Examiner excluded (R. 210-222), to show that when Seatrain first contemplated establishing a terminal at New York Harbor, it negotiated therefor with one or more of the trunk line railroads and that it was an essential part of these negotiations that payment should be made to Seatrain on freight interchanged, similar to payments made by the trunk lines to other water carriers for relieving the trunk lines of operations and expenses in completing their railroad transportation service. We submit that it was plainly erroneous and arbitrary to exclude this evidence, but having done so, it was still greater error to proceed to a conclusion which would have been negatived by the proposed testimony.

In these circumstances, far from there being "ample reason to conclude * * * that * * * the Seatrain plan of transportation * * * has sufficient advantages to

impel its use and promotion by Seatrain regardless of any contributory payments from rail connections", reasonable reflection should suggest that no water carrier will be eager to develop improved methods of handling freight, whose use saves labor and expense to the railroads, if it is to have no compensation from the railroads for the benefits which they derive therefrom, and if, as a result, the railroads that have contributed nothing to the improved facilities may expect to pocket the entire savings resulting therefrom. A decision resting on such an assumption results in the money saved by the improved facilities getting into the wrong person's pocket.

Finally, we submit that the following language of this Court in *United Gas Co.* v. *R. R. Comm'n.*, 278 U. S. 300, at page 320, is of important significance in connection with all of the several reasons given by the Commission for its decision. This Court, through Mr. Chief Justice STONE, said:

> "We recognize that a public service commission, under the guise of establishing a fair rate, may not usurp the functions of the company's directors and in every case substitute its judgment for theirs as to the propriety of contracts entered into by the utility; and common ownership is not of itself sufficient ground for disregarding such intercorporate agreements when it appears that, although an affiliated corporation may be receiving the larger share of the profits, the regulated company is still receiving substantial benefits from the contract and probably could not have secured better terms elsewhere. *Southwestern Bell Telephone Co.* v. *Public Service Comm'n.*, 262 U. S. 276, 288; *Houston* v. *Southwestern Telephone Co.*, 259 U. S. 318."

Thus, as we argued under sub-heading "B", a contract may not be disregarded by a regulatory body and payments provided for therein excluded from a carrier's costs for the purposes of rate making or divisions merely because the contract is one between subsidiary and parent corporation. The language is pertinent further, however,

because it emphasizes that what the Commission did here in rejecting the payments because it considered for various reasons that they were not "necessary" to procure for Hoboken the benefits of the interchange arrangement was, in effect, to substitute its business judgment for that of Hoboken's managers, and this, as this Court said, a regulatory body may not do.

Hence it is submitted that the reasons given by the Commission for its conclusion, which explain its failure to consider and determine the reasonableness of the compensation to be paid by Hoboken for the benefits to it of the interchange arrangement, and its failure to base thereon its determination of the division to be received by Hoboken from the lighterage-free rates were invalid, and the Court below properly directed the Commission to reconsider its decision.

POINT III

The decision and order of the Commission, in determining the divisions to be received by Hoboken in an amount less than its full cost, would take its property for public use without just compensation, in violation of the Fifth Amendment.

Hoboken's common carrier duties and the obligations imposed upon it by the Interstate Commerce Act compel it to transport the traffic offered to it and to join with the other railroads in maintaining joint rates and arrangements and facilities for through transportation, Interstate Commerce Act, Section 1(4). This compulsion imposed by law renders divisions which fail to cover Hoboken's full cost of transportation confiscatory in effect. In *Baltimore & O. R. Co. v. United States*, 298 U. S. 349, at pages 357 and 358, it was said:

> "When made in accordance with the Act, the commission's orders prescribing divisions are the equivalent

of Acts of Congress requiring the carriers to serve for the amounts specified. Taken, as they must be, in connection with the duties to the public imposed by law upon the carriers, they command service and for that purpose expropriate the use of carriers' property. If when made the prescribed divisions are or later shall become less than just compensation, the carriers may not be required to serve therefor. And, if after appropriate effort they fail to obtain divisions of non-confiscatory joint rates that do constitute just compensation for their services including the use of their properties, the carriers may by suit in equity have the order prescribing, or requiring to be kept in force, the challenged divisions adjudged void and its enforcement permanently enjoined."

There is no dispute as to this fundamental principle. The Commission itself recognized it in its decision here when it said:

> "Summarizing this discussion, we agree that complainant is entitled to divisions out of the joint rates in question which are based upon the full costs of performing its portions of the through transportation service, including a fair return, but subject to the qualifications above indicated."*

It is in the application of the principle that the Commission went wrong—in determining what are Hoboken's "full costs of performing its portion of the through transportation service". The Hoboken's property was as much taken "without just compensation" and the Commission's decision and order violated the Fifth Amendment as much, when the Commission, although professing an intention to fix divisions which would cover Hoboken's "full costs",

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*The qualifications were that if the total rates were unremunerative, Hoboken would not be entitled to divisions which covered its costs, leaving for the other carriers the entire loss. But there was no evidence or even claim that the rates here involved were unremunerative.

failed to do so because its determination of those costs was erroneous in law or contrary to the evidence, as if the Commission had deliberately set out to prescribe divisions less than Hoboken's costs.

The fact that the Commission's order was negative in form, denying Hoboken relief and dismissing its complaint, does not alter its confiscatory effect upon Hoboken nor deprive the courts of jurisdiction to set the order aside for conflict with the Fifth Amendment. *Rochester Telephone Corporation* v. *United States*, 307 U. S. 125; *Alton R. Co.* v. *United States*, 287 U. S. 229. In the *Baltimore & Ohio* case cited, the Court said (p. 358):

> "Section 15(6) requires the Commission on complaint of any participating carrier to determine whether existing divisions are just, reasonable and equitable and, if not, to prescribe others that do comply with the law. Its denial of relief from existing divisions operates to direct service under them. Though negative in form, the order of denial is affirmative in effect."

Here the Commission's order denying Hoboken's plea for a division in excess of 60 cents operates to direct it to perform its transportation undertaking under the lighterage-free rates in connection with freight interchanged with Seatrain for this division. The expenses incurred by it in connection with such freight, including the payments to Seatrain called for by the contract, will be $1.33 per ton and Hoboken will lose 73 cents on every ton of such freight which it handles. Plainly, a decision having this result takes Hoboken's property without just compensation. Under the Commission's decision, Hoboken's expenses could be kept within the division of 60 cents only if it should breach its agreement and cease to make the payments to Seatrain provided for in the contract pursuant to which the interchange is accomplished. It would then be Seatrain that would be denied compensation. In either event, the result of the Commission's order would be to transfer to the trunk lines without any consideration or

compensation from them all of the benefits and savings resulting from the arrangement between Hoboken and Seatrain and from the use, pursuant thereto, of Seatrain's special facilities in making possible an improved method of interchanging freight between a railroad and a water carrier.

POINT IV

The decision of the Commission if permitted to stand would be contrary to the public interest since it would be a precedent discouraging improvements in the art of transportation if those developing such improvements could be compelled to give to others without compensation the entire benefits which the improvements produce.

The art of transportation is still susceptible of many improvements. Much room remains for the development and introduction of labor-saving devices. This is perhaps especially true in the case of coastwise water transportation.

The United States Maritime Commission in its "Economic Survey of Coastwise and Intercoastal Shipping" (1939) commented at length on labor expense in connection with the interchange of freight between land and water carriers (pp. 24-30). On the theory of the Commission's decision, if a water carrier develops some improvement in the method of interchanging freight with a railroad which saves labor both for the water carrier and the railroad and which offers the promise of opening new channels of commerce, the railroad may not make a payment to the water carrier for the benefits which it receives; or if it does so, it may not have such payments considered a part of its legitimate costs of railroad transportation. We do not suggest, of course, that the right

to payment should be one-sided. If railroads develop methods of interchange which accomplish savings for water carriers in the latter's operations, the railroads likewise are entitled to be compensated. Unless it is recognized that payments may be made to those who develop improvements by those who derive benefits therefrom and that such payments, to the extent they are reasonable, may be included in the costs of the beneficiaries, it seems inevitable that improvements will be discouraged.

The excuse that the rates paid by shippers are what are commonly referred to as "group" rates and are based upon average costs for services of varying extent may be a reason for not immediately passing savings on to shippers in the form of reduced rates, but this is no excuse for ruling that among the carriers themselves those who receive the benefits of savings in labor and have had no hand in developing the means by which these savings are accomplished may nevertheless keep all of the financial rewards, whereas the carriers whose enterprise has produced the improvements will receive nothing except what they may exact from shippers for their own transportation services.

We submit that it is utterly fallacious to say that a payment for saving labor in performing a carrier's undertaking is not a legitimate transportation cost when the expense of the labor thus saved would be. The Commission should determine how much the saving is worth and what is reasonable compensation to pay for the benefits enjoyed from it. This the Commission here failed to do for reasons which we submit were erroneous.

In enacting the Transportation Act, 1940 (54 Stat. L. 899), the Congress wrote into it a declaration of policy directing that the Interstate Commerce Act should be

> "so administered as to * * * promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; * * *"

We submit that the decision of the Commission herein did not constitute an administration of the Interstate Commerce Act in accordance with this declared policy.

CONCLUSION

The decision of the specially constituted District Court should be affirmed.

Respectfully submitted,

PARKER MCCOLLESTER,
WILBUR LAROE, JR.,
Attorneys for Hoboken Manufacturers Railroad Company, Appellee.

October 14, 1943.

Appendix

The Pertinent Provisions of the Interstate Commerce Act

The provisions of the Interstate Commerce Act under which the proceeding before the Commission was brought are Section 1(4), providing as follows:

> "It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates, fares, charges, and classifications applicable thereto; and it shall be the duty of common carriers by railroad subject to this part to establish reasonable through routes with common carriers by water subject to part III, and just and reasonable rates, fares, charges, and classifications applicable thereto. It shall be the duty of every such common carrier establishing through routes to provide reasonable facilities for operating such routes and to make reasonable rules and regulations with respect to their operation, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof, which shall not unduly prefer or prejudice any of such participating carriers."

and also Section 15(6), which is as follows:

> "Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received

by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation) would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge."

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 43

INTERSTATE COMMERCE COMMISSION, THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL., *Appellants*,

v.

HOBOKEN MANUFACTURERS RAILROAD COMPANY, *Appellee*.

MOTION FOR LEAVE TO FILE PETITION FOR RECONSIDERATION OUT OF TIME.

PARKER McCOLLESTER,
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New York 4, N. Y.,
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Washington 5, D. C.,
Attorneys for Petitioner.

Dated at
Washington, D. C.,
January 24, 1944.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 43.

INTERSTATE COMMERCE COMMISSION, THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL., *Appellants*,

v.

HOBOKEN MANUFACTURERS RAILROAD COMPANY, *Appellee*.

MOTION FOR LEAVE TO FILE PETITION FOR RECONSIDERATION OUT OF TIME.

Now comes Hoboken Manufacturers Railroad Company, appellee in the above-entitled proceeding, and by its attorney prays that it may have leave to file the attached petition for reconsideration out of time, and in support of its motion respectfully shows:

1. The opinion of the Court was delivered on December 6, 1943 and under Rule 33 of the Court the time to file a petition for reconsideration expired on December 31, 1943.

2. The case was argued on behalf of appellee by its counsel, Parker McCollester, who conducted the proceeding before the Commission and from its inception has been ac-

tively engaged in the case. For the appellee, the matter has had the personal supervision of Mr. Graham M. Brush, president of appellee and of Seatrain Lines, Inc.

3. As soon as copies of the Court's opinion could be secured, Mr. McCollester and Mr. Brush undertook a study and analysis of it with a view to deciding whether the Court had so misconceived the case as to justify the filing in good faith of a petition for reconsideration. They were so engaged when shortly before Christmas Mr. McCollester received word that his father, Dr. Lee S. McCollester, was seriously ill and was compelled to drop everything to attend him. Dr. McCollester died on December 26, and Mr. McCollester was compelled to go to the family home in New Hampshire and could not return to his office until some time after the time for filing the petition for reconsideration had expired under Rule 33.

4. There was no other attorney sufficiently familiar with the case to advise with appellee as to the filing of such a petition.

5. By the time Mr. McCollester returned to his office after attending to affairs made necessary by his father's death, Mr. Brush had become ill with influenza.

6. As a consequence, it has only been within the past week that there has been opportunity for conference and consultation and for the preparation of the attached petition.

For the foregoing reasons, appellee prays that the Court may waive the time requirement of Rule 33 and may receive and consider the attached petition.

Respectfully submitted,

PARKER MCCOLLESTER,
25 Broadway,
New York, N. Y.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 43.

INTERSTATE COMMERCE COMMISSION, THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL., *Appellants*,

v.

HOBOKEN MANUFACTURERS RAILROAD COMPANY, *Appellee*.

PETITION FOR RECONSIDERATION.

Now comes Hoboken Manufacturers Railroad Company, appellee, and by its attorneys and pursuant to leave granted files its petition praying that the Court reconsider its decision herein, announced December 6, 1943, and in aid of such reconsideration permit the parties to re-argue the case before it should the Court deem necessary. And appellee, as grounds for its petition, respectfully shows:

I.

By complaint filed with the Interstate Commerce Commission, appellee Hoboken alleged that its division or allowance of 60 cents per ton out of the so-called lighterage-free rates for the rail transportation to and from Hoboken, N. J., in connection with freight interchanged with Seatrain

Lines, Inc., a water carrier, was unjust and inadequate because that amount was only sufficient to pay for its switching operations and was not sufficient to cover any of the expense of loading freight into or unloading freight from cars at shipside. The rail lines, including Hoboken, are obligated to perform these operations for shippers under these rates as shown in their tariffs. Hoboken receives $1.35 per ton on the same traffic when it interchanges it with all other water carriers, as to which division there is no dispute. The Hoboken, by contract with Seatrain, had obtained the benefit of a labor-saving device or method which relieved it of its normal obligations under these rates to load freight into or unload freight from cars at shipside. This contract fixed all the terms and conditions of interchange, including the point of interchange, namely, at Seatrain's cradle alongside of Seatrain's vessels.

II.

The Commission dismissed the Hoboken complaint on two grounds. On the principal point the Commission held that the railroad service covered by the railroad rates began and ended at Seatrain's cradle and that

> "The rail lines do all that is required when they place cars in or take them from the Seatrain cradle."

The Commission had previously found, however, that Seatrain had equipped itself at large expense with labor-saving devices which made unnecessary for the Hoboken to load or unload freight into and from cars at shipside. It concluded, therefore, that the payments which Hoboken made to Seatrain

> "cover no part of its (Hoboken's) transportation service under the lighterage-free rates and are in addition to the full costs of that service." (Word in parenthesis inserted.)

III.

A statutory three-judge court set aside the Commission's order on the ground that the Commission should have determined the *quantum meruit* of the benefits to the Hoboken and its trunk line railroad connections from the arrangement with Seatrain. 47 F. Supp. 779.

IV.

On appeal to this Court, the decision of the District Court was reversed, this Court stating:

> "The question is whether appellee, a terminal switching rail carrier is entitled to an increase in the divisions which it now receives out of joint class and commodity freight rates maintained by it and numerous trunk line carriers, appellants here, on traffic interchanged by appellee at Hoboken, N. J. with Seatrain Lines, Inc., a common carrier by water. The answer depends upon whether the Commission is required to treat as part of appellee's costs of performing its carrier service as prescribed by the joint rates, allowances paid by appellee for services performed by Seatrain in effecting the interchange."
>
> • • • • •
>
> "Under the lighterage-free rates the rail carriers obligate themselves to place freight within reach of ship's tackle, and to receive freight at the foot of ship's tackle—an obligation which normally requires unloading and loading of cars and may also require lighterage and various other services."
>
> • • • • •
>
> "It found from the evidence that Seatrain had established its shiploading devices at large expense and had by their adoption made unnecessary, in the interchange of traffic with Seatrain, the loading and unloading of the cars at shipside, which would otherwise be required by the lighterage-free tariffs • • •"
>
> • • • • •
>
> "As essential steps in determining whether Hoboken's payments to Seatrain are a part of the rail transpor-

tation costs, we think the court below correctly sustained the Commission's findings that Hoboken's transportation service with respect to carload freight interchanged with Seatrain begins and ends at Seatrain's cradles; that the rail lines perform the interchange transportation service covered by their tariffs 'when they place the cars in or take them from the Seatrain cradle'; and that consequently the allowances paid by Hoboken 'cover no part of its transportation service under the lighterage-free rates and are in addition to the full costs of that service.' These findings were based upon an extensive examination of the method of interchange of freight between rail and water carriers generally and between Hoboken and Seatrain. It is not and could not be seriously contended that they are unsupported by evidence.

"We are of opinion that these findings are decisive of this appeal. *The Commission's determination of the point in time and space at which a carrier's transportation service begins or ends is an administrative finding which, if supported by evidence is conclusive on the Courts.*" (Italics added.)

* * * * *

"*These findings, as we have seen, are based upon substantial evidence and since they are dispositive of the case we need not examine the evidence further* to ascertain whether it supports the Commission's additional finding that payment of the allowances to Seatrain was not necessary to induce Seatrain to perform its ship loading service in a manner which resulted in savings to the rail carriers." (Italics added.)

From the above, it will be seen that the Court conceived of the case as hinging on whether the payments made by the Hoboken to Seatrain were in connection with Hoboken's rail service or Seatrain's water service. If the latter, the Court said that Seatrain should seek its compensation out of its rates or divisions and not from the rail lines. If the former, then under the reasoning of the Court, Seatrain is entitled to compensation from the railroads.

As the contract between Hoboken and Seatrain provided that the rail service begins and ends at the cradle, there is

no dispute with the finding of the Commission or the Courts on this point. The Commission and this Court also found that Seatrain relieved the rail lines of their obligation to load freight into or unload freight from cars. Neither is there any dispute as to this finding. But, the Commission and this Court failed to find *when* this relief was given. To the petitioner this is the vital point of the case. The decisions of this Court and the Commission infer that this relief came *after* the interchange of the cars on the cradle. *That cannot be so*, we respectfully submit. The relief afforded or service performed by Seatrain must have occurred *prior* to the completion of the rail service as otherwise the rail lines' obligation and duty to load freight into or unload freight from the car would still remain unfulfilled with the car on the cradle. In placing the cars in or taking them from the Seatrain cradle, the rail lines are able to complete their service at that point because they have already been relieved of the obligation or duty to load freight into or unload freight from cars solely by virtue of Hoboken's contract with Seatrain for this relief.

If the Commission is directed to make a specific finding as to *when* the railroads were relieved of their obligations, petitioner is confident that the Commission will sustain its position that the relief came before and not after the rail transportation was complete. Under these circumstances, we believe the Commission and this Court would recognize, if the payments to Seatrain by Hoboken under its contract were for services *preceding* the completion of the rail line's service or obligation, that these payments should be treated "as a part of appellee's costs of performing its carrier service as prescribed by joint rates."

We respectfully pray that the Court may reconsider its decision and in aid of such reconsideration may grant to the parties the privilege of reargument. We respectfully pray that the Commission be required to make a specific finding whether the railroads were relieved of the necessity of loading freight into or unloading freight from cars at shipside before or after their transportation service began

ended. And if the Commission should find that the railroads were afforded such relief before their transportation service began or ended, as the case may be, it should be directed to find that expenses incurred by a railroad under a contract for a labor-saving device or method which reduces an important item of transportation cost otherwise incurred under the railroad's tariffs must, as a matter of law, be considered in the fixing of the divisions between the participating rail carriers.

Respectfully submitted,

PARKER MCCOLLESTER,
25 Broadway,
New York (4), N. Y.,

WILBUR LA ROE, JR.,
743 Investment Building,
Washington (5), D. C.,
Attorneys for Petitioner.

Dated at
New York, N. Y.,
January 24, 1944.

I hereby affirm that the foregoing motion with accompanying petition is presented in good faith and not for delay. And I hereby certify that copy of the said motion with accompanying petition has been served on each opposing counsel, i. e., by personal service on Mr. Edward M. Reidy, for Interstate Commerce Commission, Washington, D. C., and by mailing copy by first-class fully prepaid mail to Mr. Willis T. Pierson, for The Baltimore and Ohio Railroad Company, *et al.*, Baltimore and Ohio Building, Baltimore and Charles Streets, Baltimore, Maryland, and Midland Building, Cleveland, Ohio.

WILBUR LA ROE, JR.,
Of Counsel.

January 24, 1944.

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SUPREME COURT OF THE UNITED STATES.

No. 43.—October Term, 1943.

Interstate Commerce Commission, the Baltimore and Ohio Railroad Company, et al., Appellants, *vs.* Hoboken Manufacturers' Railroad Company.	Appeal from the District Court of the United States for the District of New Jersey.

[December 6, 1943.]

Mr. Chief Justice Stone delivered the opinion of the Court.

This is an appeal under 28 U. S. C. §§ 47a, 345, from a judgment by which the District Court for New Jersey, three judges sitting, set aside an order of the Interstate Commerce Commission, 47 F. Supp. 779.

The question is whether appellee, a terminal switching rail carrier, is entitled to an increase in the divisions which it now receives out of joint class and commodity freight rates maintained by it and numerous trunk line carriers, appellants here, on traffic interchanged by appellee at Hoboken, New Jersey with Seatrain Lines, Inc., a common carrier by water. The answer depends upon whether the Commission is required to treat as part of appellee's costs of performing its carrier service as prescribed by the joint rates, allowances paid by appellee for services performed by Seatrain in effecting the interchange. The Commission's order dismissed a complaint by which appellee sought to have the Commission prescribe for it increased divisions. 234 I. C. C. 114. The order, reviewable by the District Court, is reviewable by this court on appeal. *Alton R. R. Co.* v. *United States*, 287 U. S. 229, 237-40; *Baltimore & O. R. R. Co.* v. *United States*, 298 U. S. 349, 358; *Rochester Tel. Corp.* v. *United States*, 307 U. S. 125, 142.

Appellee, Hoboken Manufacturers' Railroad Company, operates a terminal switching line extending along the waterfront of Hoboken, New Jersey, for a distance of 1.632 miles. It connects with the Erie Railroad and over it with other trunk lines reaching

New York Harbor. Numerous piers on New York Harbor are served by Hoboken, at which the vessels of various steamship lines regularly dock, including those of Seatrain.

Seatrain is a common carrier by water, subject to the Commission's jurisdiction under § 1(1a) of the Interstate Commerce Act, 49 U. S. C. § 1(1a), by reason of its control of Hoboken. Investigation of Seatrain Lines, Inc., 195 I. C. C. 215, 206 I. C. C. 328. Since 1932 it has operated vessels in which it transports freight in loaded railroad cars between Hoboken, New Jersey, Havana, Cuba, and Belle Chasse, Louisiana, a point on the Mississippi River near New Orleans. The loaded cars which it transports are placed upon standard guage railroad tracks located upon four decks of the Seatrain vessels. In loading the vessel, each car is switched onto a track located on a cradle placed alongside the vessel. An overhead crane lifts the cradle containing the car, swings it over the vessel and lowers it through a hatch to the appropriate deck where the car is moved onto one of the railroad tracks on the deck.

In unloading the procedure is reversed. Each car is moved from the deck track onto the cradle. The cradle containing the car is then lifted by the crane and placed on the dock alongside the vessel where the car is switched by Hoboken over its own tracks to a connecting trunk line over which it proceeds to its rail destination. By this operation the expense is avoided of loading and unloading freight into and from the cars at shipside, ordinarily incident to exchange of traffic between rail and water carriers.

In 1932 Seatrain secured control of Hoboken by the acquisition of all of its shares of capital stock except the qualifying shares of five directors, and the two corporations were brought under the management of common officers. In 1936 Hoboken filed a complaint with the Interstate Commerce Commission under §§ 1(4) and 15(6), alleging that the divisions it was receiving out of joint class and commodity rates maintained by it and the trunk lines, appellants here, on carload rail traffic interchanged with Seatrain were too low, and asking an increase. It also sought adjustment of all divisions with respect to such traffic moving under rates prescribed by the Commission subsequent to the date of filing the complaint.

Part of the traffic interchanged with Seatrain moves on so-called lighterage-free rates, and part on non-lighterage-free rates. Under the lighterage-free rates the rail carriers obligate themselves to place freight within reach of ship's tackle, and to receive freight at the foot of ship's tackle—an obligation which normally requires unloading and loading of cars and may also require lighterage and various other services. Hoboken has generally provided for this loading and unloading service by contract with the steamship companies with which it interchanges traffic. The work is done with steamship stevedore labor for which Hoboken has paid the steamship companies at the rate of approximately 75 cents a ton. Under non-lighterage-free rates the shipper performs or provides for necessary loading or unloading of cars, in which case Hoboken has only a switching service to perform.

On carload traffic interchanged with water carriers other than Seatrain's and moving on lighterage-free rates, which is loaded or unloaded by Hoboken or at its expense, Hoboken's division of the joint through rate has been $1.35 per ton. On carload traffic moving to and from Hoboken on non-lighterage-free rates, which is loaded or unloaded by the shipper or consignee or at his expense, Hoboken's division has been 60 cents per ton.[1]

Since November, 1932, which was shortly after Seatrain acquired stock ownership control of Hoboken, it has paid to Seatrain a tonnage allowance on interchanged freight other than coal. At first 40 cents a ton, the allowance on lighterage-free freight was, in 1937, increased to 73 cents a ton, which is the approximate cost of loading or unloading carload freight. At the same time the 40 cents allowance on non-lighterage-free freight was abolished. Upon Seatrain freight moving on lighterage-free rates, the trunk lines accord to Hoboken a 60 cents per ton switching division, the same as for freight moving on non-lighterage-free rates, since with the one as with the other there is no necessity for the car loading service.

In the proceedings before the Commission Hoboken asked for the existing division of 60 cents per ton out of non-lighterage-free rates and for an increase to $1.35 per ton in its division out of lighterage-free rates on traffic interchanged with Sea-

[1] These divisions have been increased by 5 or 10%, depending on the commodity shipped, as a result of a general rate increase authorized in Fifteen Percent Case, 1937-1938, 226 I. C. C. 41.

train, on the ground that its tonnage allowances to Seatrain are a part of its costs of performing its rail transportation service with respect to the Seatrain traffic, and that in any case the trunk lines, parties to the joint rates, are benefitted by Seatrain's shiploading devices to the extent that the rail carriers are relieved of the 75 cents per ton loading and unloading charge which they would otherwise incur.

The Commission rendered its report after a full hearing at which evidence was taken.[2] It found from the evidence that Seatrain had established its shiploading devices at large expense and had by their adoption made unnecessary, in the interchange of traffic with Seatrain, the loading and unloading of the cars at shipside, which would otherwise be required by the lighterage-free tariffs; that in effecting the interchange "the rail lines do all that is required when they place the cars in or take them from the Seatrain cradle"; and that "the payments which complainant makes to Seatrain cover no part of its transportation service under the lighterage-free rates and are in addition to the full costs of that service".

The Commission recognized that if the payments by Hoboken to Seatrain are not borne in part by the rail lines through a decrease in their divisions and a corresponding increase in Hoboken's divisions "they will receive an unearned benefit" since, by reason of Seatrain's shiploading method, they are relieved of the necessity of compensating Hoboken for performance of the loading and unloading service ordinarily called for by their lighterage-free tariffs. It pointed out, however, that lighterage-free rates "are based on average conditions", and said that if a steamship line now docking on the New York waterfront and served by lighter at the New Jersey rail carriers' expense should shift to a dock with direct rail connections on the New Jersey shore a similar unearned benefit would result; yet "it would hardly be suggested" that the rail carriers should compensate the steamship company for the shift. Moreover it found no evidence that the payments were necessary to induce Seatrain to furnish its shiploading service. It stated that Hoboken's contract with Seatrain was not such evidence in

[2] For prior reports of the Commission dealing with various aspects of Seatrain's method of operation see Investigation of Seatrain Lines, Inc., 195 I. C. C. 215, 206 I. C. C. 328; Seatrain Lines, Inc. v. Akron, C. & Y. Ry. Co., 226 I. C. C. 7, 243 I. C. C. 199; Hoboken Mfrs. R. R. Co. v. Abilene & So. Ry. Co., 237 I. C. C. 97, 248 I. C. C. 109.

view of Seatrain's control of Hoboken; that it did not appear that Seatrain received such payments from any independent rail connection; and that Seatrain's method of transfer by which it receives and delivers loaded cars has sufficient advantages to impel its use by Seatrain regardless of contributing payments by its rail connections.

It concluded that Seatrain's improved method of transfer is only an incident to its plan of transportation, that the transfer is consequently not a necessary part of the rail transportation service and that Hoboken is adequately compensated for its part in that service without including the payments to Seatrain in its divisions. The Commission accordingly found that Hoboken's divisions with the payments to Seatrain excluded "are not unjust, unreasonably low, inequitable, or unduly prejudicial" and that the corresponding divisions received by the trunk lines "are not unjust, unreasonably high, inequitable, or unduly preferential of them", and ordered Hoboken's complaint dismissed.

The District Court sustained the Commission's findings that Hoboken's rail transportation service begins and ends at Seatrain's cradle, and that the payments by Hoboken to Seatrain "do not constitute a legitimate transportation cost", and held that upon these findings "supported by evidence" the Commission's "judgment is final". But it thought that even though the contract payments should be disregarded Hoboken might be obligated to pay to Seatrain the reasonable value to it of the use of the Seatrain method of interchange, and that if that use were found to have no value, at least any "windfall" resulting to the rail carriers as a whole should be divided equitably among them.

The District Court accordingly set the Commission's order aside and remanded the cause to the Commission, directing it to consider whether the Seatrain devices "are an efficient aid to railroad transportation"; if it found that they were, to evaluate their worth to Hoboken and to include in Hoboken's costs the amount of a legitimate payment for their use; and if it found that they were not, to determine whether any windfall to the rail carriers resulted from their use and to establish an equitable basis for its division among the rail carriers. The Commission has brought the case here on assignments of error challenging the District Court's determination that compensation for any part of Hoboken's payments to Seatrain should have been included in Hoboken's divisions.

Section 15(6) of the Interstate Commerce Act directs that whenever the Commission, upon complaint or on its own motion, determines that the divisions of joint rates applicable to the transportation of passengers or property, "are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial" as between carriers parties to such rates, "the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers". In cases where the joint rate has been established pursuant to a finding or order of the Commission, it may also determine and order just and reasonable divisions for the period subsequent to the filing of the complaint "and require adjustment to be made" in accordance with its determination.

At the outset it is necessary to consider the suggestion that the case may have become moot by reason of the fact that since February, 1942, Seatrain's vessels have been in Government service and Seatrain's service has been discontinued. We may assume that the resumption of the service is so uncertain as to render it conjectural whether the Commission's present determination will be given any future operation. But that determination under § 15(6) is decisive of appellee's request for adjustment of the divisions of joint rates prescribed by the Commission which have been collected since the beginning of the present proceeding. *Brimstone R. R. Co.* v. *United States*, 276 U. S. 104, 121-3. While the present record does not disclose the full extent to which joint rates, divisions of which are here sought, were prescribed by the Commission, it does appear that the Commission has in prior proceedings prescribed joint rail-water-rail rates between eastern trunk line and New England territories and southwestern territory applicable over Seatrain lines, to which Hoboken, Seatrain, and most if not all of the trunk lines which are appellants here are parties. *Seatrain Lines* v. *Akron, C. & Y. Ry. Co.*, 226 I. C. C. 7, 243 I. C. C. 199. As to them decision of this case controls the division of rates for the period since appellee's complaint was filed with the Commission. To that extent at least the case is not moot.

Apart from the Commission's exclusion of Hoboken's tonnage allowances to Seatrain, we have no occasion to consider the sufficiency of the present divisions to Hoboken. The Commission found upon abundant evidence that "they are sufficient to cover

the cost of the service performed by complainant and also a reasonable return on the property owned or used by it in performing such service". And appellee conceded before the Commission that if the payments to Seatrain are not to be considered a part of appellee's costs the divisions are adequate and "we are not entitled to anything more".

As essential steps in determining whether Hoboken's payments to Seatrain are a part of the rail transportation costs, we think the court below correctly sustained the Commission's findings that Hoboken's transportation service with respect to carload freight interchanged with Seatrain begins and ends at Seatrain's cradles; that the rail lines perform the interchange transportation service covered by their tariffs "when they place the cars in or take them from the Seatrain cradle"; and that consequently the allowances paid by Hoboken "cover no part of its transportation service under the lighterage-free rates and are in addition to the full costs of that service". These findings were based upon an extensive examination of the method of interchange of freight between rail and water carriers generally and between Hoboken and Seatrain. It is not and could not be seriously contended that they are unsupported by evidence.

We are of opinion that these findings are decisive of this appeal. The Commission's determination of the point in time and space at which a carrier's transportation service begins or ends is an administrative finding which, if supported by evidence, is conclusive on the courts. *Los Angeles Switching Case*, 234 U. S. 294, 311-14; *United States* v. *American Sheet & Tin Plate Co.*, 301 U. S. 402, 408; *United States* v. *Pan American Petroleum Corp.*, 304 U. S. 156, 158; *Baltimore & Ohio R. R. Co.* v. *United States*, 305 U. S. 507, 525-6; *Swift & Co.* v. *United States*, 316 U. S. 216, 222-5 and cases cited. In the *Tin Plate* and *Pan American* cases this Court sustained the Commission's order prohibiting, as in violation of § 6(7) of the Act, payment of allowances to an industry by rail carriers for spotting cars on its industrial tracks. The Court accepted as controlling the Commission's findings that under prevailing conditions and practice the interchange tracks of the industry were convenient and usual points for the receipt and delivery of the interchanged cars, that the rail line-haul service accordingly ended there and that for that reason the industry performed no service in spotting cars on its own tracks for which the rail carrier was compensated under its line-haul tariffs and for

which the industry was entitled to be compensated by allowances out of the line-haul charges.

The same principles apply in prescribing divisions of joint rail carrier charges where, independently of considerations not present here, the measure of the carrier's participation in the joint transportation service is the measure of its divisions of the joint transportation charges. *New England Divisions Case*, 261 U. S. 184, 195; *United States* v. *Abilene & So. Ry. Co.*, 265 U. S. 274, 284; *Baltimore & Ohio R. R. Co.* v. *United States*, *supra*, 360-62; Sharfman, Interstate Commerce Commission, vol. III-B, pp. 287-8, and the carrier is entitled to "just compensation only for what it actually does", *The Tap Line Cases*, 234 U. S. 1, 29; cf. *Louisiana & P. R. Ry. Co.* v. *United States*, 257 U. S. 114, 118.

Here the Commission was concerned with the divisions of joint rail rates which covered the rail-carrier service between inland points of rail shipment or destination and the point of interchange at Hoboken. The Commission has found that this point is the Seatrain cradle at shipside, and that the service rendered by Seatrain in loading and unloading the loaded freight cars upon and from its vessels is no part of the rail carrier service with respect to which divisions are here sought. Consequently neither Hoboken nor Seatrain is entitled to compensation out of the joint rail haul charges for the ship loading and unloading service. Since Hoboken is entitled to receive by way of divisions only its just and equitable share of the proceeds of the joint rail transportation service rendered, it cannot claim as a part of its share the costs of a service which is not a part of the rail service called for by the joint rates. Neither the joint rates of the rail carriers nor the rates of Seatrain are here under attack and presumptively they yield adequate but not excessive compensation for the transportation services rendered under them. *Beaumont, S. L. & W. Ry. Co.* v. *United States*, 282 U. S. 74, 90; *Baltimore and Ohio R. R. Co.* v. *United States*, *supra*, 356.

From these findings of the Commission, and its further finding that the interchange service rendered by Seatrain is incident to Seatrain's transportation service, it would seem to follow that Seatrain is entitled to compensation for it as such, and presumably is so compensated by its tariffs. If the compensation is inadequate the remedy lies in an increase in Seatrain's rates or in its divisions of joint rail and water transportation rates for which it has an application pending before the Commission. *Seatrain Lines, Inc.* v.

The Akron, Canton & Youngstown Ry. Co., No. 28668, filed May 22, 1941—rather than in its participation, by way of allowances paid to it by Hoboken, in the proceeds of a joint rail service of which it performs no part.

Hence the District Court's direction to the Commission to determine what part of the value of the interchange service rendered by Seatrain should "be allowed in establishing Hoboken's legitimate costs," as an "aid to railroad transportation," is inconsistent with its conclusion that the Commission correctly found that the payments by Hoboken to Seatrain "do not constitute a legitimate transportation cost," and that Seatrain's interchange service is no part of the rail transportation. If these findings be sustained, as they must, inquiry whether the payments to Seatrain have induced the performance of an interchange service resulting in savings to the rail carriers is irrelevant to a determination of divisions of the joint rates for the rail service of which the ship loading and unloading service performed by Seatrain is not a part. Cf. *Lehigh Valley R. R. Co.* v. *United States*, 243 U. S. 444, 446-7.

Section 15(6), which authorizes the division of joint rates applicable to a transportation service, contemplates only the apportionment of the proceeds of that service among the parties to it and not the compensation of others for a service not covered by the joint rates to be divided. Seatrain is not a party to this proceeding and it is not a necessary party to a proceeding to fix divisions of a joint rail rate—or of a portion of a joint rail-water rate—in which it does not participate. *United States* v. *Abilene & So. Ry.*, *supra*, 283; *Beaumont, S. L. & W. Ry.* v. *United States*, *supra*. We are accordingly not concerned with the adequacy of Seatrain's tariffs to compensate for its ship loading and unloading service or with the lawfulness of the payments to it by Hoboken. A determination by the Commission of the extent of the saving to the rail carriers attributable to Hoboken's payments to Seatrain was therefore not prerequisite to its order prescribing divisions. And its order is adequately supported by its findings that the rail transportation service begins and ends with the placing of the cars in Seatrain's cradles, and that the ship loading and unloading service forms no part of the rail transportation.

These findings, as we have seen, are based upon substantial evidence and since they are dispositive of the case we need not

examine the evidence further to ascertain whether it supports the Commission's additional finding that payment of the allowances to Seatrain was not necessary to induce Seatrain to perform its ship loading service in a manner which resulted in savings to the rail carriers.

There is an additional reason why the case should not be sent back to the Commission to reconsider its decision that Hoboken should receive no part of whatever windfall may result to the rail carriers from the use of Seatrain's method of loading and unloading. The prescription of divisions where carriers are unable to agree is not a mere partition of property. It is one aspect of the general rate policy which Congress has directed the Commission to establish and administer in the public interest. *New England Divisions Case, supra,* 195; *United States* v. *Abilene & So. Ry. Co., supra,* 284-5; *Baltimore & Ohio Ry. Co.* v. *United States, supra,* 358-60. On such an issue, at least where the Commission prescribes for the complaining party a fair return for the transportation service which it renders, the question as to what is a proper division is one for the Commission's discretion, reviewable only for unreasonableness, departure from statutory standards, or lack of evidentiary support. *New England Divisions Case, supra,* 204; *Baltimore & Ohio Ry. Co., supra,* 359; *Mississippi Valley Barge Co.* v. *United States,* 292 U. S. 282, 285-7; *Board of Trade* v. *United States,* 314 U. S. 534, 546; *Barringer & Co.* v. *United States,* 319 U. S. 1, 6-7.

The Commission has determined that it is more consistent with the nature of lighterage-free rates, which are "based on average conditions," that the switching carrier receive only fair compensation for the performance of whatever service may be required of it by the tariffs and the method of rail-water interchange, than that it share in any windfall resulting from the use of an economical method of interchange. And it stated in its report that in general the divisions of a short switching line should be determined on the basis of full remuneration for its services, without regard to the level of the joint rates, unless they are as a whole unremunerative.[3] We can hardly say that such determina-

[3] See also Divisions of Joint Rates for Transportation of Stone, 41 I. C. C. 321, 328; Rates of Peoria & Pekin Union Ry. Co., 93 I. C. C. 3, 22; 115 I. C. C. 469, 481-97, 501; Hoboken Mfrs. R. R. Co. v. A. T. & S. F. Ry. Co., 132 I. C. C. 579; Western M. Ry. Co. v. Maryland & P. R. R. Co., 167 I. C. C. 57, 63.

tions of rate policy are arbitrary, or result in such unjust divisions that the court must set them aside. Cf. *O'Keife* v. *United States*, 240 U. S. 294, 303-4.

We need not consider whether the contention that the Commission's order is confiscatory adds anything to the contention that the divisions which the Commission approved are unjust, unreasonably low, or inequitable. Compare *Baltimore & O. R. Co.* v. *United States, supra*, 364-9 with *id.* 383-5. As we have seen the claim of confiscation is restricted to the Commission's refusal to allow as a part of appellee's divisions the payments made by it to Seatrain. These payments, voluntarily made by appellee, were not exacted by the Commission. The Commission's refusal to include them in divisions of which they were not lawfully a part, not being an infringement of any right of appellee, is obviously not confiscation of its property. Cf. *Tank Car Corp.* v. *Terminal Co.*, 308 U. S. 422, 428; *Louisiana & P. B. Ry. Co.* v. *United States, supra.* The Commission's order is sustained and the judgment of the District Court setting it aside is reversed.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.